

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

In the Matter of:

ADVANCED MASONRY ASSOCIATES, LLC,
d/b/a ADVANCED MASONRY SYSTEMS,

Employer/Respondent,
and

BRICKLAYERS AND ALLIED
CRAFTWORKERS, LOCAL 8 SOUTHEAST,

Petitioner/Charging Party.

Case No. **12-RC-175179**
12-CA-176715

The above-entitled matter came on for hearing pursuant to notice, before **MICHAEL A. ROSAS**, Administrative Law Judge, at the **National Labor Relations Board, 201 East Kennedy Boulevard, Suite 530, Tampa, Florida**, on **Monday, February 6, 2017**, at **10:00 a.m.**

A P P E A R A N C E S

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1		<u>I N D E X</u>				
2						<u>VOIR</u>
3	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
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P R O C E E D I N G S

(Time Noted: 10:37 a.m.)

JUDGE ROSAS: This is a proceeding before the National Labor Relations Board, Division of Judges, Judge Michael A. Rosas. This is in the matter of Advanced Masonry Associates, LLC, doing business as Advanced Masonry Systems, Employer, and Bricklayers and Allied Craftworkers, Local 8 Southeast, Petitioner, 12-RC-175179, and then similar caption with case -- in the unfair labor practice of 12-CA-17615 [sic].

Would counsel for the parties state their appearances? General Counsel?

MS. LEONARD: Caroline Leonard, Counsel for the General Counsel, Your Honor.

MS. WALKER: Kimberly Walker -- excuse me, representing the Charging Party and Petitioner.

JUDGE ROSAS: Counsel for Respondent?

MR. HEARING: Gregory Hearing and Chad Thomas with the law firm Thompson, Sizemore, Gonzalez & Hearing, on behalf of the Respondent. With us is Mr. Richard Karp, a principal of the Company.

JUDGE ROSAS: Okay. He is your designated party?

MR. HEARING: Yes, sir.

JUDGE ROSAS: Designated party for the Charging Party?

MS. WALKER: Mr. Michael Bontempo.

JUDGE ROSAS: Does the General Counsel have a charging

1 party [sic]?

2 MS. LEONARD: It's the same, Mr. Bontempo.

3 JUDGE ROSAS: Okay. Before we proceed, can I get a set
4 of formal papers, please?

5 MS. LEONARD: Yes, Your Honor.

6 JUDGE ROSAS: Do we have the sign-in sheet? Have the
7 parties had an opportunity to look at the formal papers?

8 MS. WALKER: Yes, Your Honor.

9 MR. HEARING: The Respondent has, Your Honor.

10 MS. WALKER: Yes, Your Honor, Petitioner has.

11 JUDGE ROSAS: Any objection to those enumerated in the
12 formal papers?

13 MR. HEARING: No objection from Respondent.

14 JUDGE ROSAS: Can you describe them?

15 MS. LEONARD: Oh, the formal papers, there are two sets
16 of the formal papers. One are the Regional Director's
17 exhibits for the R case, and they are the procedural, the
18 petition, the stipulated election agreement, and so on and so
19 forth, up through the direction and order, the hearing on
20 objections, which is today.

21 And then the other set are for the ULP case. They are
22 called the General Counsel's exhibits. And similar, it's the
23 charges, affidavits of service, and so on, complaint, answer.

24 JUDGE ROSAS: I have two sets that are both described as
25 index and description of General Counsel's exhibits, right?

1 MS. LEONARD: There is the -- do you want to go off the
2 record?

3 JUDGE ROSAS: No, no, just tell me.

4 MS. LEONARD: Okay. So there are, yes, there's two.
5 The open packets, there are -- yeah, those are the General
6 Counsel's exhibits. And then --

7 JUDGE ROSAS: So the General Counsel's exhibits are 1(a)
8 through 1(q), correct?

9 MS. LEONARD: Yes.

10 **(General Counsel's Exhibit 1(a) through 1(q) marked for**
11 **identification.)**

12 JUDGE ROSAS: And that is with respect to the unfair
13 labor practice case.

14 MS. LEONARD: Right, that's the -- yes, and then these
15 over here are the R case ones.

16 JUDGE ROSAS: Ah, okay. Counsel for Charging Party, do
17 you want to describe them?

18 MS. WALKER: The ULP case, Your Honor, or for the R
19 case?

20 MS. LEONARD: The R case.

21 JUDGE ROSAS: For the R case.

22 MS. WALKER: The R case. They are central to the
23 procedural papers involved in the R case proceeding, the
24 petition.

25 JUDGE ROSAS: That would be 1(a) through 1(m), correct?

1 MS. WALKER: You're correct, Your Honor.

2 **(Regional Director's Exhibit 1(a) through 1(m) marked for**
3 **identification.)**

4 JUDGE ROSAS: All right, there being no objections, I'm
5 going to receive in the CA case General Counsel's 1(a)
6 through 1(q), and in the R case, 1(a) through 1(m), without
7 objection.

8 **(General Counsel's Exhibit 1(a) through 1(q) received in**
9 **evidence.)**

10 **(Regional Director's Exhibit 1(a) through 1(m) received in**
11 **evidence.)**

12 JUDGE ROSAS: Before we continue, there is the matter of
13 one petition to revoke that is pending we have to address
14 briefly on the record. We had an extensive discussion off
15 the record.

16 Counsel for Respondent, can you briefly enumerate your
17 objections to the items sought to be produced in the
18 subpoena?

19 MR. HEARING: Your Honor, would that be something to be
20 addressed by counsel for Petitioner, to address the
21 objections?

22 JUDGE ROSAS: Well, I have her petition to revoke.

23 MR. HEARING: Sure.

24 JUDGE ROSAS: So all I'm receiving is your -- yeah, I
25 have the matter of eight documents or eight items that she

1 seeks to have produced.

2 MR. HEARING: Sure, Your Honor. The Respondent
3 requested those documents as relevant to the issues in the
4 complaint and to the Union's objections to the election on
5 the basis that the documents requested would enable it to
6 fully and fairly defend itself consistent with the discovery
7 standards applicable with Board proceedings and due process.
8 Your Honor has ruled, and we are prepared to summarize those
9 rulings as we understand them.

10 JUDGE ROSAS: Let me kind of go through this quickly,
11 then, if I can. So Items 1 and 2 were seeking all written
12 communications sent to Region 12 during the relevant time
13 period by the Union, as well as all documents supporting the
14 allegations in the amended complaint.

15 And I sustained or granted the petition to revoke with
16 respect to those two items as potentially involving the
17 production of materials that might be protected under
18 Section 7. These are materials that with respect to any
19 communications containing information to or from witnesses or
20 employees, these are things that you can certainly
21 cross-examine, have produced, or entitled to have produced
22 during cross-examination under Jencks.

23 I believe it was under number 3 that we -- I decided
24 that all documents arising out of or relating to the Union's
25 visits to the AMS jobsites from January 1, 2016, to the

1 present, not including any authorization cards signed by AMS
2 employees that the Union will produce. Potentially there is
3 a weekly report that would have been generated by
4 Mr. Bontempo for me to review and to determine what, if
5 anything, can be produced from that report for the
6 observation of/information of the Respondent.

7 It's my understanding that Item 4 of the subpoena was
8 withdrawn because the parallel objection was withdrawn. Is
9 that correct?

10 MR. HEARING: Correct, Your Honor. And to place it in
11 the Union's objections, it is number 6 in the Union's
12 objections, which reads, "Employer by and through its agents
13 offered free health insurance to an eligible voter. This
14 action coerced eligible voters, rendering them unable to
15 exercise their free choice of a bargaining unit agent in the
16 election."

17 It is our understanding, Ms. Walker, it is correct that
18 the Union is withdrawing that objection?

19 MS. WALKER: Yes. On the record, the Petitioner
20 withdraws objection number 6 as read by counsel for
21 Respondent.

22 JUDGE ROSAS: Okay. With respect to 5, 6, and 7, they
23 related to employee files of Mr. Bontempo and Danny Booth, as
24 well as any communications -- all communications from
25 Mr. Bontempo arising out of the Union's attempt to represent

1 unit employees at the Company for purposes of collective
2 bargaining, unfair labor practices and/or objections. And
3 from January 1, 2015, to the present, all written
4 communications sent to or given by Mr. Bontempo to any
5 current or former employees of the Company, not including
6 authorization cards for reasons previously stated. I grant
7 the petition to revoke those items as well. You can get that
8 information when the witnesses testify.

9 With respect to number 8, in that regard I'm instructing
10 the Union to produce for in camera review any documents from
11 April 29, 2016, to the present showing or tending to show
12 Mr. Bontempo's solicitation of company employees to leave
13 their employment at the Company. Okay? All right, so try to
14 have that production to counsel -- can you have it by later
15 today?

16 MS. WALKER: Yes, Your Honor, we can.

17 JUDGE ROSAS: All right, so that disposes of that
18 petition to revoke. Is there anything else before we go on
19 the record?

20 MS. LEONARD: I believe we're already on the record?

21 MS. WALKER: Yes.

22 JUDGE ROSAS: I'm sorry, before we continue. I
23 apologize.

24 MS. LEONARD: Your Honor, this morning the parties have
25 reached a joint stipulation as to the supervisory status and

1 some other jurisdictional matters.

2 JUDGE ROSAS: Is that with respect to the three
3 individuals that were --

4 MS. LEONARD: Yes.

5 JUDGE ROSAS: -- cited in the petition to revoke --

6 MS. LEONARD: Yes.

7 JUDGE ROSAS: -- by the General Counsel.

8 MS. LEONARD: And we have distributed copies to the
9 parties, and I now present them to you. It's Joint
10 Exhibit 1. It's the only one where this appears.

11 JUDGE ROSAS: Okay.

12 **(Joint Exhibit 1 marked for identification.)**

13 JUDGE ROSAS: So as a result of this stipulating --
14 stipulation regarding the statutory supervisory status or
15 agent status of these individuals, what does that do to any
16 of the allegations or objections in the case, or defenses?

17 MR. HEARING: Your Honor, with respect to the answer
18 that the Respondent filed in the complaint, there were
19 allegations in the complaint that certain individuals are
20 supervisors and agents of the Employer during at all times
21 relevant. And because there was a question over what the
22 relevant time period was, the Employer denied those
23 allegations, but with the stipulation that we've cleared it
24 up as we are prepared to stipulate that certain individuals
25 during certain times did fall under those statutory

1 definitions.

2 JUDGE ROSAS: Okay.

3 MR. HEARING: If I may inquire, Ms. Leonard, that the
4 stipulation, does that eliminate the Employer's need to
5 produce documents pursuant to the second subpoena?

6 MS. LEONARD: Yes.

7 MR. HEARING: I can read the numbering of that subpoena.

8 MS. LEONARD: Absolutely, it is.

9 JUDGE ROSAS: So we will mark this as Joint Exhibit 1,
10 okay, is received in evidence.

11 **(Joint Exhibit 1 received in evidence.)**

12 JUDGE ROSAS: So if we're ready to call witnesses, I
13 will issue a sequestration order.

14 MS. LEONARD: Are we going to do opening statements?

15 JUDGE ROSAS: Oh, you want to do an opening statement.
16 That's fine.

17 MS. LEONARD: I would prefer to.

18 JUDGE ROSAS: Then we'll do it after your -- we'll issue
19 the sequestration after the opening. Okay, go ahead.

20 MS. LEONARD: Okay, thank you, Your Honor.

21 **OPENING STATEMENT**

22 MS. LEONARD: Good morning, Your Honor. Advanced
23 Masonry Systems performs bricklaying and other masonry work
24 on commercial building sites through the Tampa Bay and indeed
25 the Florida area. For a number of years, Respondent had a

1 bargaining relationship with the Bricklayers and Allied
2 Craftworkers, Local 1. That relationship was embodied in
3 successive 8(f) bargaining agreements, the most recent of
4 which expired approximately on April 30, 2016.

5 On April 29, 2016, the Union filed the petition in case
6 RC-175179 seeking to become the certified exclusive
7 collective bargaining representative of the unit employees
8 pursuant to Section 9(a) of the Act instead. In response to
9 that petition, Respondent embarked on an aggressive
10 anti-union campaign, holding several meetings with its
11 employees in an effort to encourage those employees to vote
12 against the Union.

13 The evidence offered today will show that during the
14 course of its anti-union campaign, the Respondent
15 interrogated employees. It will also show that in early
16 May 2016, Safety Director Aleksei Feliz told Spanish-speaking
17 masons at Respondent's University of Tampa worksite that they
18 should vote no because the Union would take their money, and
19 that if they voted yes, their hourly wages would go down from
20 \$20 an hour or more to \$18.35 per hour.

21 On May 16, 2016, Respondent suspended employees Luis
22 Acevedo and Walter Stevenson and subsequently discharged them
23 the next day, May 17th, which is 8 days before the ballots
24 were to be mailed to employees in the election case.

25 Although Respondent asserts that it discharged Acevedo

1 and Stevenson because they violated its safety rules, the
2 evidence will show that Respondent seized on the purported
3 violation as a pretext for getting rid of Acevedo, one of the
4 most active and outspoken supporters of the Union, and to
5 discourage other employees from supporting the Union. It
6 appears that Mr. Stevenson, who was working with Mr. Acevedo
7 on May 16th, was discharged in an effort to hide Respondent's
8 disparate treatment of Mr. Acevedo.

9 On May 25, 2016, the ballots were mailed to employees.
10 And on June 9, 2016, the tally of ballots issued. The
11 original tally of ballots shows that Respondent, the Union,
12 and the Board agent conducting the election challenged the
13 eligibility of a combined 22 voters, and the Union filed
14 timely objections to the conduct of the election. The
15 8 ballots challenged by the Union have been resolved, leaving
16 14 unresolved challenges. As Your Honor is aware, the
17 challenges and objections have been consolidated for hearing
18 with these unfair labor practice allegations.

19 To remedy the unfair labor practices, General Counsel
20 seeks an order requiring Respondent to cease and desist its
21 illegal conduct in all respects, including discharging or
22 otherwise discouraging employees from supporting the Union
23 and engaging in union and other protected concerted
24 activities, making threats to employees for supporting the
25 Union, and interrogating union employees about their

1 interactions with union agents; order that Mr. Acevedo and
2 Mr. Stevenson be made whole, including but not limited to
3 payment for consequential economic harm they incurred as a
4 result of Respondent's unlawful conduct and that they be
5 offered reinstatement; post at all of its jobsites and
6 otherwise distribute via mail a notice to employees, to all
7 employees and former employees.

8 And finally we request that Your Honor order all further
9 appropriate relief justified to remedy Respondent's illegal
10 conduct. Thank you.

11 JUDGE ROSAS: Does the Charging Party have an opening at
12 this time?

13 MS. WALKER: Yes, Your Honor, we'll do a brief opening
14 supplement to Counsel for General Counsel.

15 **OPENING STATEMENT**

16 MS. WALKER: Petitioner submits that the Employer cannot
17 supply the requisite evidence to meet the heavy burden of
18 proving ineligibility of the 14 challenged voters. Moreover,
19 Petitioner can submit evidence of each challenged voter's
20 eligibility. Petitioner requests that Employer's challenges
21 be overruled and that all 14 ballots be counted.
22 Alternatively, if the resolution to the challenged ballots
23 does not result in certification of Petitioner, timely
24 objections to the conduct affecting the results of the
25 election have been made by Petitioner, four of which are

1 overlapping with the unfair labor practice charges at issue
2 in this hearing.

3 Petitioner submits that conduct by the Employer was
4 sufficient to interfere with the employees' exercise of their
5 free choice in selection of a bargaining representative, and
6 the requisite laboratory conditions were disturbed, rendering
7 free choice impossible. Consequently, the objections should
8 be sustained and a rerun election be ordered. Thank you.

9 JUDGE ROSAS: Respondent, you can issue an opening now,
10 or you can reserve till the beginning of your case, or you
11 can waive.

12 MR. HEARING: I'll go ahead and give it now just to give
13 you further perspective.

14 **OPENING STATEMENT**

15 MR. HEARING: Again, I'm Greg Hearing, and along with
16 Chad Thomas we represent the Respondent. Mr. Richard Karp is
17 with us. We appreciate the opportunity to tell you how we
18 view the case. We appreciate that we have consolidated these
19 two cases, too, so that we could be expedient through this
20 process this week.

21 In a nutshell, of course, we contend that no violations
22 of the Act have occurred, neither under 8(a)(1) or 8(a)(3),
23 and I'll highlight our position on those briefly. With
24 regard to the challenged ballots, we believe that we'll be
25 able to show through substantial competent evidence that they

1 should not be counted and therefore leaving the election
2 result of a 16/16 tie in place. We know that there's going
3 to be some challenge by the Union from that, but we think we
4 can easily show that we meet the exceptions under Board law.

5 You have heard a description of what Advanced Masonry
6 Systems is. We'll refer to them as AMS. Oftentimes, you'll
7 hear that throughout this hearing this week. The timeline
8 has, I believe, been laid out, but just it's a very short
9 timeline from our perspective. On April 29, 2016, the Union
10 filed a petition to represent the masons. AMS campaigned in
11 a manner permitted by the law, did not violate the Act. The
12 election was conducted properly under the auspices of the
13 Board's Division of Elections. The votes were counted on
14 June 9th, and it resulted in a 16/16 tie.

15 The 14 uncounted ballots were based on longstanding
16 Board criteria. And we believe that under the Steiny/Daniel
17 formula, that these individuals didn't have a reasonable
18 expectation of future employment. Five of them were
19 terminated for cause in 2015-2016, and we'll put on evidence
20 to show that. The other nine voluntarily quit a job of AMS
21 of the Bethune-Cookman University where there was still
22 substantial work to be completed, so that falls within the
23 exception of the Steiny/Daniel formula. That would mean that
24 they wouldn't have a reasonable expectation of work and
25 therefore should not be counted.

1 With regard to the alleged pre-election conduct, we
2 appreciate that one of the objections of free health
3 insurance has been withdrawn because the only evidence that's
4 in the file was that it was Mr. Bontempo that actually made
5 that offer to our employees that the Union would provide for
6 any health insurance. We appreciate that we don't have to go
7 down that trail.

8 With regard to the threat to reduce wages, what the
9 evidence will be is that Mr. Feliz did not make any such
10 threat. Factual statements were made about what had been
11 obtained by the Union under prior last agreed upon rate
12 sheets and pointed out to the employees that the current
13 employees make more than what was previously agreed upon in a
14 rate sheet.

15 I believe that there is some contention that employees
16 were interrogated. We're not quite sure where that comes
17 from. We believe that perhaps the allegation will come from
18 Mr. Bontempo, but we believe the evidence will show that
19 Mr. Bontempo was upset because the Company applied its no
20 solicitation policy when he would come onto multiple sites
21 offering Gatorade, T-shirts, and other things, pizza for
22 instance, and the foreman said that on these jobs we're not
23 going to allow you in working areas during working time and
24 expressly told him that he would be allowed to, as he had
25 been in the past and as he knows from having been a prior

1 employee of AMS for a period of time, which by the way was
2 referred by the Union and he was hired by the Company, which
3 we believe will show that should dispel any union animus.

4 Same thing with Mr. Acevedo, who is the individual that
5 they claim was terminated in a disparate manner because of
6 his union activity. The Company hired him knowing that he
7 was a union mason and had no union animus against him. In
8 fact, some of our foremen, the evidence will be and will show
9 that they are currently dues paying members; they actively
10 supported the Union and the hiring of union masons by the
11 Company.

12 We believe that Mr. Bontempo, what this is really about
13 is that he was upset because he was not allowed to come on
14 except during breaks or before or after the work was done,
15 and he was scurried off several projects during working time.
16 We also think the evidence will show that Mr. Bontempo is not
17 credible for various reasons that we'll get into through
18 cross-examination.

19 So finally we contend that, of course, there is no
20 violation of the Act, and we believe that we will easily
21 establish enough evidence to show that the 14 challenged
22 ballots should not be counted for the reasons I previously
23 stated.

24 Thank you for your time and attention.

25 JUDGE ROSAS: All right. So at this time I'm going to

1 issue a sequestration order in this proceeding so that any
2 person who expects to be called as a witness in the
3 proceeding, other than one who is designated by each side to
4 be its representative or essential representative, will be
5 required to remain outside the courtroom whenever testimony
6 or proceedings are taking place.

7 Limited exception applies in these instances where that
8 individual is present when your respective side is calling
9 someone else who is going to testify to the same facts,
10 transaction, events that that individual might also be
11 expected to testify, in other words provide cumulative
12 testimony with respect to. It does not apply with respect to
13 anyone being called by the other side, all right? It only
14 has to do with your own witnesses. So if you are calling
15 someone, the General Counsel or Charging Party were calling
16 someone that's going to testify to the same transaction of
17 events that Mr. Bontempo, for example, is going to testify
18 to, he needs to step outside, and you can designate somebody
19 else to be the essential party. Okay?

20 MS. LEONARD: Your Honor, a quick clarifying question.
21 Does that include a witness called by the General Counsel
22 under Rule 611(c)?

23 JUDGE ROSAS: Okay. Again, it's not a -- there are
24 always modifications of this in the ordinary course. If it's
25 someone that's subpoenaed that counsel has not met with,

1 would not necessarily know what they're going to testify to,
2 that's a different story. Just explain that. It's not
3 someone within your control. But presumably all counsel here
4 I know are very competent, and before they call anyone,
5 they're expected to know what the testimony should be of each
6 the respective witnesses. So the witnesses don't need to be
7 listening to someone else also prepared by counsel testifying
8 to the same thing they're going to be testifying to. But if
9 it's somebody who is not within your control and you've
10 subpoenaed and you have not prepped, so obviously it's a
11 whole different story, I think.

12 That's kind of like my approach, that you process and
13 trying to keep things on the fair and up. If there are any
14 objections or any suggestions, I'm always open to it. But
15 generally that's the way I've been doing things.

16 So the sequestration order also prohibits all witnesses
17 from discussing with any other witnesses or potential
18 witnesses the testimony they have given or will give.
19 Likewise, counsel may not disclose to any witnesses the
20 testimony of any other witnesses. Counsel may, however,
21 inform his or her own witness of the content of the testimony
22 given by any opposing party's witness to prepare to rebut
23 that testimony.

24 It is counsel's responsibility to make sure that any
25 witnesses comply with the sequestration rules. If there are

1 any issues, discuss it among yourselves before bringing it to
2 my attention; see if you can work it out. Okay. Is there
3 anything else before we go forward?

4 MS. WALKER: No, Your Honor.

5 MR. HEARING: I was just confirming that one of the
6 witnesses we would ask to leave is actually Counsel for the
7 General Counsel's first witness, so I don't have to ask him
8 to leave.

9 JUDGE ROSAS: All right, General Counsel, call your
10 first witness.

11 MS. LEONARD: Your Honor, Counsel for the General
12 Counsel calls Mr. Aleksei Feliz pursuant to Rule 611(c),
13 Federal Rules of Evidence.

14 JUDGE ROSAS: Okay. Have a seat.

15 MR. FELIZ: Thank you, sir.

16 JUDGE ROSAS: Sir, please raise your right hand.

17 (Whereupon,

18 **ALEKSEI FELIZ**

19 was called as a witness by and on behalf of the General
20 Counsel and, after having been duly sworn, was examined and
21 testified as follows:)

22 JUDGE ROSAS: Please have a seat.

23 THE WITNESS: Thank you.

24 JUDGE ROSAS: You can state and spell your name.

25 THE WITNESS: My name is Aleksei Feliz. That's

1 A-l-e-k-s-e-i, Feliz, F as in Frank, e-l-i-z.

2 JUDGE ROSAS: Can you provide us with an address?

3 Business is fine.

4 THE WITNESS: 5403 Ashton Court in Sarasota, Florida.

5 JUDGE ROSAS: Okay.

6 **DIRECT EXAMINATION**

7 Q. BY MS. LEONARD: Good morning, Mr. Feliz.

8 A. Good morning, ma'am.

9 Q. Mr. Feliz, you have been Respondent's safety coordinator
10 since about 2009; is that correct?

11 A. Yes.

12 Q. Describe a typical week as a safety coordinator.

13 A. Typical week as a safety coordinator is to visit
14 jobsites and ensure OSHA compliance to our industry, if you
15 will, depending on what areas of work is going on.

16 Q. Approximately how many jobsites are active for the
17 Employer at any given time?

18 A. That varies depending on economic situations. That
19 varies.

20 Q. How many are the maximum number that there have been in
21 your tenure?

22 A. Maximum?

23 Q. Um-hum, at a time.

24 A. Perhaps 10 to 15. It's hard for me to say.

25 Q. Approximately how often do you get to each jobsite?

1 A. As a safety coordinator?

2 Q. Yes.

3 A. Possibly once a week.

4 Q. What are the other reasons that you would visit a
5 jobsite?

6 A. To take employment applications.

7 Q. You have an assistant safety coordinator. It's

8 Mr. Fernando Ramirez, correct?

9 A. No, that's incorrect.

10 Q. Who is your assistant?

11 A. As a safety coordinator, I didn't have any assistant.

12 As a safety director, I have an assistant. So I have two
13 positions through the Company.

14 Q. Could you please describe the difference between safety
15 coordinator and safety director?

16 A. The safety coordinator reports to the safety director.
17 So in 2009 when I was hired as a safety coordinator, I was
18 just an assistant to a safety director.

19 Q. When did you become safety director yourself?

20 A. Perhaps in 2010.

21 Q. At that point, the safety coordinator, was that
22 Mr. Fernando Ramirez?

23 A. Correct.

24 Q. What does Mr. Ramirez do, then, that's different from
25 what you do?

1 A. Well, he visits jobsites and does all the compliance.

2 It's the same responsibility, just he reports to me as that's

3 have a much broader range of duties, if you will.

4 Q. What you're doing when you check the jobsites is for

5 safety violations?

6 A. One of the things I do, yes.

7 Q. Are there ever instances where you will see a safety

8 violation and correct it without documenting it?

9 A. Yes.

10 Q. Are there instances where you see a safety violation and

11 you do document it?

12 A. Yes.

13 Q. What goes into making the decision as to whether you

14 will document it or not?

15 A. A simple safety glasses. For instance, having your

16 safety glasses here versus putting them on, there is no need

17 to document that.

18 Q. Each jobsite has at least one foreman, correct?

19 A. Correct.

20 Q. Employees are sometimes disciplined by yourself or

21 Mr. Ramirez for safety violations; is that correct?

22 A. Correct.

23 Q. Do the foremen also participate in that discipline?

24 A. It depends on the discipline, depends on what it is.

25 Q. What would that be?

1 A. Again, if it's a minor simple infraction of maybe not
2 wearing your safety glasses or not having your high
3 visibility vest, it's a simple conversation.

4 Q. Sometimes employees are disciplined by being sent home
5 for the day; is that correct?

6 A. That is correct.

7 Q. What is the reason for that?

8 A. It could be again not having their safety glasses on.

9 Q. I'm sorry. I mean why is that the punishment for the
10 violation?

11 A. Why is that?

12 Q. Yeah.

13 A. Well, to let them know that they need to come to the
14 jobsite prepared.

15 Q. At this time I'd like you to unclip those documents for
16 me and flip over the first tier there -- no, I'm sorry, keep
17 the whole thing upside down and then take the first set off
18 the top. Yeah, peel it off.

19 JUDGE ROSAS: Do you have a set for counsel?

20 MS. LEONARD: Yeah.

21 **(General Counsel's Exhibit 2(a) through 2(c) marked for**
22 **identification.)**

23 Q. BY MS. LEONARD: Peel it off and look that over. These
24 are documents that have been marked as General Counsel's
25 Exhibits 2(a), 2(b), and 2(c). Mr. Ramirez [sic], what is

1 the document on top there, General Counsel Exhibit 2(a)?

2 A. This is a document that we use called the employee new
3 orientation, hazard activity analysis.

4 Q. When do you use this document?

5 A. We use this document anytime we start a new job, we
6 bring on board new employees.

7 Q. Is that a group orientation?

8 A. It is a group orientation.

9 Q. And then if you could flip through that until you get to
10 Exhibit 2(b), please? It should be about four or five pages
11 down, maybe a little more. There we go.

12 MS. LEONARD: For those following along, we're looking
13 at the safety flyer now.

14 Q. BY MS. LEONARD: Yes, thank you. Mr. Feliz, what is
15 this document?

16 A. This document talks about the proper use of a harness
17 and fall protection equipment.

18 Q. Who uses this particular document?

19 A. I'm sorry?

20 Q. Who is this given to?

21 A. This is for all the employees. It is gone over with
22 them to explain how to use the fall protection equipment.

23 Q. So a safety violation takes that document and then
24 describes what's on it to the employees?

25 A. Mr. Ramirez would be the one conducting that.

1 Q. All right, thank you. And if you could flip the page
2 again to the next there? Yeah, General Counsel's Exhibit
3 2(c), what is this document?

4 A. This document would be the signature of employees that
5 were actually part of the orientation.

6 Q. What date did all of these employees attend orientation?

7 A. Let's see. I have two dates, February 9th, May 9th. It
8 looks like two different dates.

9 Q. It looks like all of the dates were written by the same
10 person. Does that look right to you?

11 MR. HEARING: Objection.

12 JUDGE ROSAS: What's the basis?

13 MR. HEARING: Lack of predicate knowledge, and we
14 certainly don't agree.

15 JUDGE ROSAS: Hold on, let me look at it. What page
16 again?

17 MS. LEONARD: It's 2(c).

18 JUDGE ROSAS: Repeat the question.

19 MS. LEONARD: I can rephrase.

20 Q. BY MS. LEONARD: Mr. Feliz, regarding the dates that are
21 written in as February 9, 2016, does it look to you like they
22 are all written by the same person? Do you recognize the
23 handwriting?

24 A. No, I don't recognize the handwriting, no.

25 MS. LEONARD: Thank you. Your Honor, at this time, I

1 move to admit General Counsel's Exhibits 2(a), 2(b), and 2(c)
2 into evidence.

3 MR. HEARING: No objection by Respondent.

4 JUDGE ROSAS: General Counsel's 2(a) through 2(c) are
5 received.

6 **(General Counsel's Exhibit 2(a) through 2(c) received in**
7 **evidence.)**

8 MS. LEONARD: And now if you could flip that over and
9 then peel off the next layer. That'll be General Counsel's
10 Exhibit Number 3.

11 **(General Counsel's Exhibit 3 marked for identification.)**

12 Q. BY MS. LEONARD: Do you recognize that document?

13 A. This document, yes.

14 Q. What is it?

15 A. It's an entry on a log, construction log.

16 Q. This is a log about Mr. Richard Haser being sent home
17 for the day on February 19, 2016, for a fall protection
18 violation. Is that correct?

19 A. Looks like he was sent home, that's correct, yes.

20 Q. And Mr. Haser was not discharged for this violation even
21 though it was his second fall protection offense, was he?

22 A. I couldn't tell by looking at this document.

23 Q. That was the only document in his personnel file that
24 would indicate that he was not discharged that day, wouldn't
25 it?

1 A. Okay.

2 MS. LEONARD: Okay. Your Honor, at this time I move to
3 admit General Counsel's Exhibit 3 into the record.

4 MR. HEARING: No objection.

5 JUDGE ROSAS: General Counsel's 3 is received.

6 **(General Counsel's Exhibit 3 received in evidence.)**

7 MS. LEONARD: At this point, if you peel off the next
8 layer, we can have a little fun here. Originally, I had
9 General Counsel's Exhibit 4 and it was a single page, but now
10 there are additional pages, so if we could all write in a
11 little (a) on the first page of General Counsel's Exhibit 4,
12 that would be great. Thank you.

13 **(General Counsel's Exhibit 4(a) marked for identification.)**

14 Q. BY MS. LEONARD: Now, Mr. Feliz, do you recognize this
15 document?

16 A. Yes.

17 Q. So this shows that similar to Mr. Haser, Mr. Tim Bryant
18 was sent home for the day for a fall protection violation on
19 March 8, 2016, correct?

20 A. Yes.

21 Q. Mr. Bryant was not discharged even though this was less
22 than a month after he had been trained on fall protection use
23 as shown in General Counsel's Exhibit 2(c), correct?

24 A. Well, it was actually dismissed. It's marked dismissed.

25 Q. It is marked dismissed. But he returned to work, didn't

1 he?

2 A. I don't know.

3 Q. Okay. It said that he was sent home for the remainder
4 of the day, doesn't it?

5 A. It does.

6 **(General Counsel's Exhibit 4(b) marked for identification.)**

7 Q. BY MS. LEONARD: If you could flip over to the next,
8 that will be General Counsel's 4(b). We can see that is --
9 what is that?

10 A. This would be a copy of -- appears to be the front page
11 of Mr. Bryant's personnel file.

12 Q. What does that show with regard to Mr. Bryant being
13 discharged by the Employer?

14 A. In terms of the date?

15 Q. Yes.

16 A. April 19th.

17 **(General Counsel's Exhibit 4(c) marked for identification.)**

18 Q. BY MS. LEONARD: Thank you very much. And if you could
19 flip over one more time to General Counsel's 4(c)? Do you
20 recognize that document?

21 A. Yes.

22 Q. What is that document?

23 A. That is an e-mail from Mr. Ramirez to me.

24 Q. What is Mr. Ramirez telling you?

25 A. It says that mason Tim Bryant was observed laying block

1 on a leading edge, on top of a 6-foot scaffold, on the second
2 floor, approximately 18 feet high from the ground.

3 MS. LEONARD: At this time, Your Honor, I move to admit
4 General Counsel's Exhibits 4(a), 4(b), and 4(c) into the
5 record.

6 MR. HEARING: No objection.

7 JUDGE ROSAS: When you refer to 4(a) is that --

8 MS. LEONARD: Yes.

9 JUDGE ROSAS: -- Exhibit 4?

10 MS. LEONARD: It is. Could you write in an (a) for me?
11 I didn't -- this is one of the subpoena production documents,
12 4(b) and 4(c) were, so it's --

13 JUDGE ROSAS: 4(a) through 4(c) are received in evidence
14 without objection.

15 **(General Counsel's Exhibit 4(a) through 4(c) received in**
16 **evidence.)**

17 MS. LEONARD: Thank you very much, Your Honor. And now
18 if we can flip over and peel off the next one, it'll be
19 General Counsel's Exhibit 5. Yeah, flip over then the next
20 one. See that page there.

21 **(General Counsel's Exhibit 5 marked for identification.)**

22 Q. BY MS. LEONARD: Do you recognize this document?

23 A. Yes.

24 Q. What is this document?

25 A. That's a --

1 MR. HEARING: Excuse me. May I catch up, please?

2 JUDGE ROSAS: Sure, sure. Hold on one second.

3 MR. HEARING: This 4 has -- it continues on.

4 MS. LEONARD: Sorry, they got a little out of order.

5 MR. HEARING: And there's 15, 16, etc.

6 MS. LEONARD: Your Honor, if I may approach the witness?

7 JUDGE ROSAS: Sure.

8 MR. HEARING: I just want to make sure you're not
9 confused.

10 MS. LEONARD: No, stay on 15 because we'll actually do
11 that first. Okay, my apologies, we're going to start here.

12 **(General Counsel's Exhibit 15(a) marked for identification.)**

13 Q. BY MS. LEONARD: Mr. Feliz, do you recognize the
14 document there, General Counsel's Exhibit 15(a)?

15 A. Looks to be the personnel file of Michael Mosley.

16 Q. All right, thank you. Could you describe what the
17 abbreviation FDT is under the record entry of 11/19/15?

18 A. I don't know what that means.

19 Q. Is it possible it would mean failed drug test?

20 A. Possibly.

21 **(General Counsel's Exhibit 15(b) marked for identification.)**

22 Q. BY MS. LEONARD: If you could flip over to Exhibit
23 15(b)? Do you recognize that document?

24 A. It's a reason for leaving form for Michael Mosley.

25 Q. And what is the reason given there?

1 A. It says he failed a drug test.

2 Q. Thank you very much. So Mr. Mosley had an accident of
3 some kind. Do you recall this accident?

4 A. No, I do not.

5 Q. Is it -- it is the Employer's practice to give a drug
6 test after all accidents on the jobsite; is that correct?

7 A. Correct.

8 Q. Mr. Mosley obviously took that and then failed and was
9 discharged; is that correct?

10 A. According to the document, yes.

11 Q. That would be something that you would classify as an
12 extreme safety violation, correct, getting into an accident
13 while on drugs?

14 A. Yeah, I would say so, yeah.

15 Q. Great. Thank you very much.

16 **(General Counsel's Exhibit 16(a) marked for identification.)**

17 Q. BY MS. LEONARD: If we could flip now to General
18 Counsel's Exhibit 16(a)? Do you recognize this document?

19 A. Again, it's an employee file, someone that was
20 terminated.

21 Q. Do you see the reason that was terminated there?

22 A. Post-accident, looks like he failed drug test.

23 MS. LEONARD: Okay, great.

24 I'm sorry, Your Honor, at this time, I would move to
25 admit General Counsel's Exhibits 15(a), 15(b), and 16 into

1 the record.

2 MR. HEARING: No objection.

3 JUDGE ROSAS: Is that 16(a) and something else, 16(b)?

4 MS. LEONARD: My apologies, Your Honor. I misnumbered.

5 MR. HEARING: There's a 16(b), yeah.

6 MS. LEONARD: There is a 16(b), but it's about a

7 different employee.

8 JUDGE ROSAS: So it's just 15(a) --

9 MS. LEONARD: Yeah, 15(a), 15(b) and 16.

10 JUDGE ROSAS: Any objection?

11 MS. LEONARD: You all probably have a copy of 16(b), but
12 it is about a different person, so that's my bad. Just leave
13 that aside. We're not doing 16(b).

14 MR. HEARING: No objection from the Respondent.

15 JUDGE ROSAS: So General Counsel's 15(a), 15(b), and
16 16(a) are received.

17 **(General Counsel's Exhibit 15(a) and 15(b) and 16(a) received**
18 **in evidence.)**

19 MS. LEONARD: Thank you very much, Your Honor. Sorry
20 for the confusion.

21 **(General Counsel's Exhibit 17 marked for identification.)**

22 Q. BY MS. LEONARD: Now, Mr. Feliz, if we could turn to
23 General Counsel's Exhibit Number 17? Do you recognize this
24 document?

25 A. Well, once again, it's the copy of someone's personnel

1 file.

2 Q. What does the personnel file say about this person's
3 discharge on November 3, 2016?

4 A. Looks like a positive drug test.

5 MS. LEONARD: Your Honor, at this time, I move to admit
6 General Counsel's Exhibit 17 into the record.

7 MR. HEARING: No objection.

8 JUDGE ROSAS: General Counsel's 17 is received.

9 **(General Counsel's Exhibit 17 received in evidence.)**

10 **(General Counsel's Exhibit 18 marked for identification.)**

11 Q. BY MS. LEONARD: Now, Mr. Feliz, if you could turn to
12 General Counsel's Exhibit 18? Do you recognize this
13 document?

14 A. Once again it is a -- it looks like an employee warning.

15 Q. What is the substance of Mr. Walker's warning?

16 A. Appears to be some issue operating the forklift.

17 Q. Mr. Walker was just given this warning, correct?

18 A. Correct.

19 MS. LEONARD: Your Honor, I move to admit General
20 Counsel's Exhibit 18 into the record.

21 MR. HEARING: No objection.

22 JUDGE ROSAS: General Counsel's 17 is received.

23 MR. HEARING: Did you say 17?

24 JUDGE ROSAS: 17, General Counsel -- no, this is 18.

25 MR. HEARING: Yes, sir.

1 MS. LEONARD: Yeah, Mr. Omar Walker.

2 MR. HEARING: She's moving fast on this.

3 JUDGE ROSAS: Did we do 17?

4 MR. HEARING: Yes, sir.

5 MS. LEONARD: Yeah, that was Wayman Sanders's personnel
6 file.

7 JUDGE ROSAS: Okay. Wayman is --

8 MR. HEARING: Wayman Sanders would be 17. And we didn't
9 object to that admission. We don't object to number 18.

10 JUDGE ROSAS: And 18 is Omar Walker. Okay, no
11 objection?

12 MR. HEARING: No, sir.

13 JUDGE ROSAS: General Counsel's 18 is received.

14 **(General Counsel's Exhibit 18 received in evidence.)**

15 **(General Counsel's Exhibit 19(a) through 19(c) marked for**
16 **identification.)**

17 Q. BY MS. LEONARD: The last few of these are all General
18 Counsel's Exhibits 19; 19(a), (b), and (c). And I apologize,
19 it looks like the bottom of 19(b) got cut off in the copier.

20 Mr. Feliz, do you recognize these documents?

21 A. Which ones specifically?

22 Q. Let's start with 19(a).

23 A. Yes.

24 Q. What is this?

25 A. Looks like a personnel file.

1 Q. Who is responsible for Mr. Salgado's termination on
2 August 9, 2016?

3 A. According to the file, Mr. Ramirez.

4 Q. If we could look at General Counsel Exhibit 19(b), do
5 you recognize this document?

6 A. Termination report.

7 Q. Do you recognize General Counsel Exhibit 19(c)?

8 A. It's an e-mail from Mr. Ramirez to me.

9 Q. Who is Ms. Yolanda Phelps?

10 A. She would be the payroll administrator.

11 Q. Why would Mr. Ramirez be e-mailing this e-mail to
12 Ms. Phelps as well?

13 A. Because she is involved in operations as of payroll.
14 Where somebody gets terminated, the check might be sent to
15 their home versus the jobsite, so she needs to know.

16 Q. Okay, great. Does this e-mail, General Counsel's
17 Exhibit 19(c), is this the report referred to in the
18 termination notice, 19(b), when it says see attached Fernando
19 report?

20 A. I don't know that's what he's referring to. I don't
21 know.

22 Q. Is there any other report that would be filed on more
23 formal documentation?

24 A. At times we take pictures and we attach those to the
25 report.

1 MS. LEONARD: Your Honor, at this time, I move to admit
2 General Counsel's Exhibit 19(a), 19(b), and 19(c) into the
3 record.

4 MR. HEARING: No objection.

5 JUDGE ROSAS: General Counsel's 19(a), (b), and (c) are
6 received.

7 **(General Counsel's Exhibit 19(a) through 19(c) received in**
8 **evidence.)**

9 MS. LEONARD: Okay, great. And at this point, we should
10 be back at General Counsel's Exhibit 5. We moved around. Is
11 that correct with everybody, hopefully? Great.

12 Q. BY MS. LEONARD: Okay, so, Mr. Feliz, do you recognize
13 General Counsel's Exhibit 5?

14 A. Yes.

15 Q. What is it?

16 A. That's Mr. Ramirez's report regards to Mr. Acevedo on
17 May 16.

18 Q. So Mr. Ramirez filled these out himself. Is that
19 correct?

20 A. Correct.

21 Q. You directed Mr. Ramirez to send the employees home
22 after you talked to him and before he filled out this report,
23 correct?

24 A. Correct.

25 Q. When Mr. Ramirez was on the phone with you, he told you

1 that some employees had been -- that these employees had been
2 trained on fall protection; is that correct?

3 A. Correct.

4 Q. At that time Mr. Ramirez did not tell you the names of
5 the employees involved, did he?

6 A. I don't believe he did, no.

7 **(General Counsel's Exhibit 6 marked for identification.)**

8 Q. BY MS. LEONARD: Okay, great. If you could flip over
9 now to General Counsel's Exhibit Number 6? Do you recognize
10 this document?

11 A. It is Mr. Walter Stevenson's report for the same
12 incident.

13 Q. And all the facts that we just discussed about
14 Mr. Acevedo's report would be the same for Mr. Stevenson; is
15 that correct?

16 A. Yes.

17 MR. HEARING: Object to the form.

18 JUDGE ROSAS: Repeat the question?

19 Q. BY MS. LEONARD: Mr. Ramirez filled out this report to
20 you as well?

21 A. Yes.

22 Q. And you spoke to Mr. Ramirez prior to his filling out
23 the form, correct?

24 A. Yes.

25 Q. And Mr. Ramirez did not tell you the names of the

1 employees involved in this incident on May 16th, correct?

2 A. Correct.

3 Q. You directed him to send both Mr. Acevedo and
4 Mr. Stevenson home, but you did not use their names since you
5 did not know their names, correct?

6 A. I directed to send the employees home, wherever they
7 were.

8 MS. LEONARD: Okay, great. At this time, Your Honor, I
9 move to admit General Counsel's Exhibits 5 and 6 into the
10 record.

11 MR. HEARING: No objection.

12 JUDGE ROSAS: General Counsel's 5 and 6 are received.

13 **(General Counsel's Exhibits 5 and 6 received in evidence.)**

14 MS. LEONARD: If you would peel off the next stack
15 there, it's several pages. Mr. Feliz, do you recognize any
16 of these documents? There are several. They are --

17 MR. HEARING: For identification purposes, is this 7(a)?

18 MS. LEONARD: Yes, 7(a) through 7, I believe (j). There
19 are a lot of them.

20 MR. HEARING: Looks like (m).

21 MS. LEONARD: Through (m), yes, my apologies, 7(a)
22 through 7(m), which itself is a three-page exhibit.

23 **(General Counsel's Exhibit 7(a) through 7(m) marked for**
24 **identification.)**

25 Q. BY MS. LEONARD: Do you recognize these documents at

1 all?

2 A. No, never seen them before.

3 Q. Are you aware that AMS campaigned to have its employees
4 vote no in the union election that was held last year?

5 A. I knew there was an election going, but I had nothing to
6 do with it. That's why I didn't see any of these documents.

7 MS. LEONARD: Your Honor, these documents were provided
8 pursuant to the subpoena production of Respondent, and at
9 this time, I would move to admit General Counsel's Exhibits
10 7(a) through 7(m) into the record.

11 MR. HEARING: The only objection I have is to (l) and
12 (m) because it appears that the documents have been altered
13 by the Counsel for the General Counsel, and I want to confirm
14 that that's the case.

15 JUDGE ROSAS: You said (m) and which?

16 MR. HEARING: (l) and (m). It appears that there's
17 redactions made; is that correct?

18 MS. LEONARD: Those redactions were part of the
19 production and the investigation.

20 MR. HEARING: This is exactly how we produced it?

21 MS. LEONARD: Yes.

22 MR. HEARING: Okay. Then no objection.

23 JUDGE ROSAS: No objection. General Counsel's --

24 MS. LEONARD: 7(a) through (m).

25 JUDGE ROSAS: -- 7(a) through (m) are received.

1 **(General Counsel's Exhibit 7(a) through 7(m) received in**
2 **evidence.)**

3 MS. LEONARD: Thank you very much.

4 Q. BY MS. LEONARD: Mr. Feliz, do you recall any of your
5 visits to the University of Tampa jobsite that you made
6 during the first week of May of 2016?

7 A. I do.

8 Q. Did you travel to that jobsite and speak there to the
9 Spanish-speaking masons about the upcoming election?

10 A. I did.

11 Q. There were about seven employees that you spoke to
12 there, correct?

13 A. Approximately.

14 Q. Mr. Luis Acevedo was one of them, correct?

15 A. I believe so.

16 Q. All of those were fluent Spanish speakers, correct?

17 A. Yes.

18 Q. And you, yourself, are a fluent Spanish speaker?

19 A. I am.

20 Q. You talked about insurance benefits and rates of pay at
21 that meeting to the employees; is that correct?

22 A. A question was asked to that effect.

23 Q. It was a yes or no question, Mr. Feliz. Were they --
24 were you speaking about insurance benefits and rates of pay?

25 MR. HEARING: Objection. I'd ask that the witness be

1 allowed to answer as the witness sees fit, not as only
2 counsel sees fit.

3 JUDGE ROSAS: Let me give an instruction to the witness
4 so that there is no confusion as to how we're going to rule
5 on these things. Counsel, when properly phrasing questions
6 on direct exam -- well, actually, counsel, because you're
7 what's considered an adverse or hostile witness, can actually
8 lead you with a question. If a question seeks to elicit a
9 yes or no answer, you can answer either yes or no or I don't
10 know. Okay? Or I can't answer that. Let counsel do the
11 work. But if you can answer the question in the form that it
12 is posed, you have to answer it that way.

13 If counsel then leads you to the point where you can
14 give a narrative, then feel free to do so. But, again, if
15 you can't answer it in that form, then you have to indicate
16 that and let counsel follow up on that. Okay?

17 THE WITNESS: Very well.

18 JUDGE ROSAS: If a question is not responsive or goes
19 beyond, then what you need to do is move to strike.

20 MS. LEONARD: Your Honor, I do in fact move to strike
21 Mr. Feliz's last response.

22 JUDGE ROSAS: Let's repeat the next question.

23 Q. BY MS. LEONARD: Mr. Feliz, at that meeting with the
24 Spanish-speaking masons at the University of Tampa, you
25 talked about insurance benefits and rates of pay, correct?

1 A. No, not -- that is incorrect.

2 **(General Counsel's Exhibit 8(a) through 8(e) marked for**
3 **identification.)**

4 Q. BY MS. LEONARD: If you could flip over the next set of
5 exhibits, please, that's General Counsel's Exhibit 8, that's
6 8(a) through 8(e). There are several papers there. Let's
7 start with 8(a). Do you recognize that document?

8 A. It's again reason for leaving form.

9 Q. This is employee Brandon Carollo, correct?

10 A. Yes.

11 Q. He was discharged from the Bethune-Cookman jobsite in
12 Daytona Beach in February of 2016 for a fall protection
13 violation, correct?

14 A. I don't know by looking at this document.

15 Q. Are you familiar with the employee Brandon Carollo?

16 Okay, well, we'll get there. Don't worry about it.

17 General Counsel's Exhibit 7(a) -- or 8(a), I'm sorry, it does
18 say that he was fired though, correct?

19 A. It does.

20 Q. But it doesn't say the reason?

21 A. Correct.

22 Q. Okay, great. So if you could now turn over to General
23 Counsel's Exhibit 8(b). Mr. Carollo filed for unemployment
24 with the State of Florida after he was discharged, correct?

25 A. It appears that he did, yes.

1 Q. Yes. Actually, if you also want to take a look at
2 General Counsel's Exhibit 8(c), that is after the seven pages
3 of 8(b), that will be there, too. If you want to look at
4 page 5 of General Counsel's Exhibit 8(c), is that your
5 signature there?

6 A. I'm not sure I'm looking at the same document you're
7 looking at.

8 Q. Okay. So there is General Counsel's Exhibit 8(b), which
9 is seven pages, and then 8(c), which is five pages. So
10 actually I think it should be the bottom page of what you're
11 holding right now.

12 A. Okay.

13 Q. Yes. Is that your signature there?

14 A. It is.

15 MS. LEONARD: That's page 5 of General Counsel's Exhibit
16 8(c), to clarify for the record.

17 Q. BY MS. LEONARD: Mr. Feliz, looking at General Counsel's
18 Exhibit 8(c) as a whole, so if you go to the four pages at
19 the bottom of your right hand there, yeah, do you recall
20 filling out this report for the Florida Department of
21 Economic Opportunity?

22 A. I do.

23 Q. This is your handwriting throughout the report?

24 A. Yes.

25 Q. And your signature at the end, as you previously

1 testified.

2 A. Yes.

3 Q. What did you say about Mr. Carollo's discharge in this
4 report to the Florida DEO?

5 A. Looks like he was, he was working at an elevation of
6 6 feet or higher without fall protection.

7 Q. Looking at page 2, question number 3 -- do you see
8 question number 3?

9 A. Yes.

10 Q. It says what the rule or policy issued was and was it
11 communicated to the claimant. Could you please tell us what
12 your response to that was?

13 A. Yes.

14 Q. What was your response?

15 A. Oh, you want me to read the response?

16 Q. Or summarize it, yes.

17 A. When he was hired then again on June 24th and on
18 August 20th.

19 Q. And you say see attached there?

20 A. Yes.

21 Q. If you could flip to General Counsel's Exhibits 8(d) and
22 8(e), these are the records that you're referencing when you
23 said "see attached" there, correct?

24 A. Yes.

25 Q. These are notices that were issued by the contractor at

1 Bethune-Cookman, Hensel Phelps; is that correct?

2 A. That is correct.

3 Q. Looking at 8(d) first, Mr. Ramirez signed this document,
4 did he not?

5 A. Appears that he did, yes.

6 Q. This was the first warning issued to Mr. Carollo for
7 fall protection?

8 A. Yes.

9 Q. He was sent home for the day, correct, or 2 days it
10 looks like? It's a little fuzzy.

11 A. It looks like it, yes.

12 Q. Looking at General Counsel's Exhibit 8(e), that is the
13 second warning that was issued on August 20th, correct, of
14 2015?

15 A. Yes.

16 Q. This was also for safety violation of fall protection?

17 A. Yes.

18 Q. What was the remedy there? How was Mr. Carollo
19 disciplined?

20 A. Looks like he was sent home for 3 days, I guess. I
21 can't read it very well.

22 Q. Yeah, it is fuzzy. But that is what it looks like to
23 me, too. And then going back to General Counsel's Exhibit
24 8(b), backwards a little ways, that first unemployment

25 report, if you look at page 7 of that, this report was filled

1 out by Ms. Phelps; is that correct?

2 A. Yes.

3 Q. Were both Ms. Phelps's report and your report submitted
4 to the DEO with respect to Mr. Carollo's unemployment
5 insurance claim?

6 A. Your Honor, I don't know the answer to that.

7 Q. Okay, that's fine. Did you fill out your report with
8 the intention that it be submitted to the DEO when you filled
9 out your report?

10 A. Yes.

11 MS. LEONARD: Your Honor, at this time, I would move to
12 admit General Counsel's Exhibit 8(a) through 8(e), inclusive.
13 8(b) was produced in response to the subpoena production.

14 MR. HEARING: No objection.

15 JUDGE ROSAS: General Counsel's 8(a) through 8(e) are
16 received.

17 **(General Counsel's Exhibit 8(a) through 8(e) received in**
18 **evidence.)**

19 Q. BY MS. LEONARD: And finally, Mr. Feliz, if you could
20 please turn back to General Counsel's Exhibits 2 and 3
21 towards the top of your -- or, I'm so sorry, Exhibits 5
22 and 6. That would be the warning notices for Mr. Acevedo and
23 Mr. Stevenson.

24 A. Yes.

25 MS. LEONARD: Everybody ready? Okay.

1 Q. BY MS. LEONARD: Now, Mr. Feliz, these forms indicate
2 that they are Mr. Acevedo's and Mr. Stevenson's first
3 warnings for fall protection, correct?

4 A. It appears to be, yes.

5 Q. You made the decision to discharge Mr. Acevedo and
6 Mr. Stevenson later that night, correct?

7 A. Yes.

8 Q. That was because Mr. Ramirez sent you paperwork
9 regarding the incident?

10 A. Yes.

11 Q. That paperwork was the first time you became aware of
12 which employees specifically were involved in the incident,
13 correct?

14 A. Yes.

15 **(General Counsel's Exhibits 9 and 10 marked for**
16 **identification.)**

17 Q. BY MS. LEONARD: Now, if you could turn to General
18 Counsel's Exhibit 9 and 10? Do you recognize these
19 documents, 9 and 10?

20 A. Yes.

21 Q. What are they?

22 A. That is the dismissal, termination papers for
23 Mr. Acevedo and Mr. Stevenson.

24 Q. Do you know who prepared these documents?

25 A. No, I do not.

1 Q. Do you recognize your signature anywhere on these
2 documents?

3 A. Sure.

4 Q. Where is your signature?

5 A. On Mr. Acevedo's report.

6 Q. It looks like it's Mr. Brent McNett's signature on
7 Mr. Stevenson's form?

8 A. Yes.

9 Q. They were discharged at the same time, correct?

10 A. Yes.

11 MS. LEONARD: Thank you very much. At this time, Your
12 Honor, I have no further questions for Mr. Feliz.

13 JUDGE ROSAS: Are you offering 9 and 10?

14 MS. LEONARD: Oh, I'm sorry, I do offer --

15 MR. HEARING: No objection to that.

16 MS. LEONARD: Thank you. I do offer 9 and 10, Your
17 Honor.

18 JUDGE ROSAS: General Counsel's 9 and 10 received.

19 **(General Counsel's Exhibits 9 and 10 received in evidence.)**

20 JUDGE ROSAS: No more questions from the General
21 Counsel. Charging Party?

22 MS. WALKER: No questions, Your Honor.

23 JUDGE ROSAS: Cross?

24 MR. HEARING: My first question is can I have some
25 paperclips, please, from your table?

1 MS. LEONARD: Some what?

2 MR. HEARING: Some paperclips. I forgot to bring mine,
3 and these are all loose. Thank you.

4 **CROSS-EXAMINATION**

5 Q. BY MR. HEARING: Mr. Feliz, how long have you been
6 employed with AMS?

7 A. Since 2009.

8 Q. What was your first role with them?

9 A. I was the safety coordinator.

10 Q. What does a safety coordinator do with the Company?

11 A. The safety coordinator visits jobsites and looks for
12 compliance with OSHA regulations.

13 Q. I'm certain that Your Honor is familiar with generally
14 about OSHA regulations, but with regard to bricklaying, are
15 there particular OSHA regulations that the Company must
16 follow with regard to how the masons lay the brick?

17 A. There are.

18 Q. Could you generally describe those?

19 A. There is a fall protection guidelines that OSHA sends
20 out that they expect employees to be protected when working
21 at elevated platforms.

22 Q. At what elevation?

23 A. OSHA asks for a 10-foot requirement for scaffold
24 compliance. We go beyond that. The industry is really
25 6 feet.

1 Q. Six feet?

2 A. Right.

3 Q. So what does that mean, that when a mason is at 6 feet
4 elevation?

5 A. It means that that particular employee, mason, tender,
6 whoever it is, needs to be tied off.

7 Q. With a safety harness?

8 A. Correct, safety harness, retractable line.

9 Q. I think it's Exhibit 2, General Counsel Exhibit 2.

10 MS. LEONARD: 2(b).

11 Q. BY MR. HEARING: 2(b). Do you have that in front of
12 you? Is this a picture of the harness fitting that AMS
13 requires its masons to wear on its jobs when they're 6 feet
14 or higher?

15 A. Correct. This is the document we would use during
16 training so everybody understand how to -- what the
17 requirement is and the height and whatnot.

18 Q. The top part, can you explain what that means?

19 A. Yeah, it means basically you need to have a suitable
20 anchor point and the distances that you need to be tied off
21 in order for the equipment to work.

22 Q. Now, have you received OSHA training, sir?

23 A. I have.

24 Q. Could you briefly describe that?

25 A. I have received the OSHA 500 training, which is the

1 OSHA's highest certification that is given to employers that
2 want to have their own safety programs and train their own
3 employees.

4 Q. What does that involve to receive that training? How
5 much time?

6 A. It involves approximately 2 weeks of instruction and a
7 test at the end that you have to pass.

8 Q. With regard to your responsibilities as safety director,
9 what are they vis-à-vis the OSHA requirements and/or AMS's
10 requirements?

11 A. I'm sorry. What was the question?

12 Q. Sure. What are your responsibilities as safety
13 director?

14 A. My responsibility is to ensure safety compliance with
15 OSHA guidelines for the safety of the employees.

16 Q. How about with AMS's guidelines, safety guidelines?

17 A. Absolutely, yeah.

18 Q. And on jobs that AMS has worked on since you've been
19 safety director, I assume that AMS is a subcontractor to a
20 general contractor?

21 A. That is correct.

22 Q. Do the general contractors require certain safety
23 standards be met as part --

24 A. Absolutely, yes. Absolutely.

25 Q. -- as part of the work?

1 A. Yeah, absolutely.

2 Q. Are you responsible for understanding and implementing
3 the general contractor's safety requirements?

4 A. I am.

5 Q. What would that entail?

6 A. That entailed providing the general contractor, the
7 contractor with a written safety program and how I'm going to
8 address fall protection while at their site. That's part of
9 the requirement.

10 Q. What would it entail with regard to actual AMS
11 employees?

12 A. It would entail fall protection starting at 6 feet.
13 They ask me to describe how I'm going to accomplish that,
14 what equipment they're going to be wearing.

15 Q. Would you undertake training of AMS employees before
16 they would work on a GC project?

17 A. We do.

18 Q. How do you do that?

19 A. I typically send my assistant either to a jobsite to
20 conduct the training, or the training might be done at the
21 AMS office depending on geographically where the employees
22 are at.

23 Q. If the work involved working at 6 feet or higher by
24 masons, what would the training be generally?

25 A. The training is going to talk about fall protection,

1 harnesses. This document would be part of it.

2 Q. Would it include putting on the vest and how to put on
3 the vest and wear the vest?

4 A. How to put on the harness, that's correct, yes.

5 Q. And then how to tie off to scaffolding?

6 A. That's correct. It would include also the equipment
7 they're going to need to do that.

8 Q. I think you said, but I'm not sure, do you have some
9 responsibility with regard to the hiring of masons for AMS?

10 A. I do.

11 Q. What's your responsibility?

12 A. My responsibility is to meet with people at the
13 jobsites, take their employment applications. I do that
14 based on the direction of others that work in operations.
15 They tell me we need certain number of people, and I try to
16 bring those people to work for us.

17 Q. Have you, through this process, hired union masons?

18 A. I have.

19 Q. Have you ever refused to hire a mason because of a union
20 affiliation?

21 A. No, I don't. And I don't know if they're union or not.
22 There is nowhere in the application that tells me what they
23 are. I'm just -- I'm simply hiring people.

24 Q. But you subsequently learn that they're union members?

25 A. I do, yes.

1 Q. How about Mr. Acevedo, did you know before he was hired
2 by AMS that he was a union mason?

3 A. I did not.

4 MR. HEARING: We've got some exhibits.

5 MS. LEONARD: Thank you.

6 MR. HEARING: May I approach?

7 JUDGE ROSAS: Sure.

8 MR. HEARING: I'm sorry to be so formal, but I just
9 finished a 2-week jury trial, so I'm used to doing, being
10 more formal.

11 **(Respondent's Exhibit 22 marked for identification.)**

12 Q. BY MR. HEARING: I want to talk about Mr. Acevedo.
13 Turning to number 22 in this book before you, sir, do you
14 have that before you?

15 A. I do.

16 Q. Do you recognize what that is?

17 A. Yes. That's a letter that Mr. Acevedo sent to AMS.

18 Q. Was this letter provided to you before Mr. Acevedo was
19 hired by AMS?

20 A. I don't recall.

21 Q. Let me see if I can refresh your recollection.

22 **(Respondent's Exhibit 23 marked for identification.)**

23 Q. BY MR. HEARING: If you turn to Respondent's Exhibit
24 Number 23, the next one for identification purposes? Is this
25 a letter authored by you?

1 A. Yes.

2 Q. To Mr. Acevedo?

3 A. That's correct.

4 Q. Dated what date?

5 A. July 30th.

6 Q. Is it regarding his correspondence to AMS?

7 A. Yes. It's regarding the letter he wrote on the, on
8 the -- it doesn't have a date but referred to his letter,
9 yes.

10 Q. The one that's Respondent's Exhibit Number 22 --

11 A. Correct.

12 Q. -- for identification purposes.

13 A. Correct.

14 Q. Did Respondent's Exhibit 23 refresh your recollection as
15 to whether you read Respondent's Number 22?

16 A. Yes.

17 Q. When you read Respondent's Exhibit Number 22, did you --
18 were you able to discern that Mr. Acevedo was a union mason?

19 A. Yes, that's when I learned he was a union mason.

20 Q. And the first line there -- well, it's not in evidence.

21 MR. HEARING: Move the introduction of Respondent's
22 Exhibit 22.

23 MS. LEONARD: No objection from the General Counsel.

24 MS. WALKER: No objection.

25 JUDGE ROSAS: Respondent's 22 is received.

1 **(Respondent's Exhibit 22 received in evidence.)**

2 Q. BY MR. HEARING: The first line there, he says, "My name
3 is Luis Acevedo. I have been a certified Union mason for
4 over 9 years." Do you see that?

5 A. Yes.

6 Q. So when you responded to him in Respondent's Exhibit 23,
7 did you then know that he was a union mason?

8 A. I did.

9 Q. What was the purpose of Respondent's Exhibit Number 23?

10 A. The purpose was to address when he sent this letter, he
11 included his telephone number. I spoke to him on the phone,
12 and the letter of July 30th, it was a follow-up to the
13 conversation I had on the phone with him.

14 Q. So then you memorialized your response to that
15 conversation?

16 A. Correct.

17 MR. HEARING: Move the introduction of Respondent's 23.

18 MS. LEONARD: No objection, Your Honor.

19 MS. WALKER: No objection.

20 JUDGE ROSAS: Respondent's 23 is received.

21 **(Respondent's Exhibit 23 received in evidence.)**

22 Q. BY MR. HEARING: After you sent this letter -- well, in
23 this letter, it speaks for itself, but you told him that you
24 didn't have a project in Tampa but that you do have one in
25 Daytona Beach?

1 A. Correct.

2 Q. Do you know if he applied to work for AMS after you sent
3 this July 30, 2015 letter?

4 A. I don't know that for a fact, no.

5 **(Respondent's Exhibit 24 marked for identification.)**

6 Q. BY MR. HEARING: So turning to Respondent's Exhibit
7 Number 24 for identification purposes, is this a letter that
8 you authored, sir?

9 A. Yes.

10 Q. On what date?

11 A. August 7th.

12 Q. To whom was it sent to?

13 A. It was to Mr. Acevedo.

14 Q. Was it regarding his possible employment with AMS?

15 A. That is correct, yes.

16 MR. HEARING: Move the introduction of Respondent's 24.

17 MS. LEONARD: No objection, Your Honor.

18 MS. WALKER: No objection.

19 JUDGE ROSAS: Respondent's 24 is received.

20 **(Respondent's Exhibit 24 received in evidence.)**

21 **(Respondent's Exhibit 25 marked for identification.)**

22 Q. BY MR. HEARING: And then turning to Respondent's
23 Exhibit Number 25, can you identify what this document is,
24 sir?

25 A. This is the acknowledgement agreement that Mr. Acevedo

1 looks like he signed.

2 Q. On what date?

3 A. October 1, 2015.

4 Q. This is a document kept in the ordinary course of the
5 running of the business of AMS?

6 A. It is.

7 MR. HEARING: Move the introduction of Respondent's 25.

8 MS. LEONARD: Your Honor, I object. I'm not 100 percent
9 sure what the relevance is.

10 JUDGE ROSAS: Do you want voir dire, or do you want to
11 just object?

12 MS. LEONARD: I think at this point I would just object.

13 JUDGE ROSAS: Relevance?

14 MR. HEARING: Shows the hiring date of Mr. Acevedo after
15 learning of the knowledge that he's a union mason.

16 JUDGE ROSAS: Overruled. Respondent's 25 received.

17 **(Respondent's Exhibit 25 received in evidence.)**

18 Q. BY MR. HEARING: It appears that if you look at Exhibit
19 Number 24, August 7, 2015, your last correspondence to him
20 subsequent to that is when he was hired by the Company; is
21 that correct?

22 A. That is correct.

23 Q. And this document number 25, it references an employee
24 handbook.

25 A. That is correct.

1 Q. Would you be able to identify that, sir, if I placed it
2 in front of you?

3 A. I can.

4 **(Respondent's Exhibit 2 marked for identification.)**

5 Q. BY MR. HEARING: Would you turn to Exhibit Number 2 in
6 the book in front of you, Respondent's 2? Do you recognize
7 this document, sir?

8 A. Yes, I do.

9 Q. It appears to have a date of January 2015 on the front.

10 A. That is correct.

11 Q. Is this the employee handbook still in effect at AMS?

12 A. That is.

13 MR. HEARING: Move the introduction of Respondent's 2.

14 MS. LEONARD: No objection, Your Honor.

15 MS. WALKER: No objection.

16 JUDGE ROSAS: Respondent's 2 is received.

17 **(Respondent's Exhibit 2 received in evidence.)**

18 Q. BY MR. HEARING: Does this document include information
19 regarding the Company's safety policies, sir?

20 A. Yes, it does.

21 Q. Could you tell us what page, looking at the bottom, what
22 page number we may be able to find that or what pages?

23 A. Well, it starts on Section 8.1. Let's see what page
24 that will be.

25 Q. To speak it up, it's page 45?

1 A. Yes, sir, that's correct.

2 Q. Under the policy there on page 45, the fifth paragraph
3 down, there is a statement, "Compliance with these safety
4 standards is considered a condition of employment." What
5 does that mean?

6 A. It means that you have to comply with the safety
7 regulations in order for you to keep employment with the
8 Company.

9 Q. Turning to page 48 -- I'm sorry, 47, 8.3 Safety Rules?

10 A. Yes, sir.

11 Q. The policy states, "Employees must comply with all
12 safety rules." Why does AMS have that policy?

13 A. Why?

14 Q. Yes, sir.

15 A. Well, it's for the protection of their employees' lives.

16 Q. Required by OSHA as well?

17 A. It's also required not only by OSHA but by the people we
18 work for.

19 Q. You mean the general contractor?

20 A. The general contractor.

21 Q. There is a section on preventing falls. There is a
22 reference to "Fall protection equipment will be utilized at
23 all elevated locations." Is that fall protection equipment,
24 is that what you see in the General Counsel's Exhibit Number
25 2 -- I can't remember the number.

1 MS. LEONARD: 2(b) .

2 Q. BY MR. HEARING: 2(b) .

3 A. That is correct.

4 Q. On page 48, there is a reference to personal protective
5 equipment. Is that sometimes referred to as PPE?

6 A. That is correct.

7 Q. The statement there that, "Always wear or use
8 appropriate safety equipment as needed," is General Counsel's
9 2(b) the appropriate safety equipment for masons working at
10 an elevated height?

11 A. Yes. That would be included in that, yes.

12 Q. What else, if anything?

13 A. It would be included. Safety glasses would be included,
14 hard hats.

15 Q. Down at the bottom of page 48, there's other sources of
16 safety information. There is a reference to fall protection
17 program. What is that, sir?

18 A. That is an actual program that I'm required to give the
19 contractor of us -- for them to review and accept that in
20 fact we're in compliance not only with their requirements but
21 also OSHA requirements.

22 Q. The end of this -- I'm going to come back to that fall
23 protection program in a moment. But at the end of this
24 Exhibit 2, at page 68, there is that acknowledgement and
25 agreements page. Do you see that?

1 A. Yes.

2 Q. Turning to Respondent's Exhibit 25 in evidence, is that
3 Mr. Acevedo's executed acknowledgement and agreement
4 regarding the employee handbook? Number 25, it's in your
5 book, sir.

6 A. Okay. That's correct, that is.

7 Q. So does 25 establish that Mr. Acevedo read through and
8 acknowledged receipt of AMS's employee handbook?

9 MS. LEONARD: Objection, Your Honor, calls for
10 specification.

11 JUDGE ROSAS: Whether he actually read it?

12 MS. LEONARD: Yes.

13 JUDGE ROSAS: I'll take it for whatever it's worth. He
14 did an acknowledgement of it. There are legal connotations
15 to the signing of an acknowledgement, so we'll take it for
16 what it's worth.

17 Q. BY MR. HEARING: And just, Mr. Feliz, when the Company
18 has the fourth bullet point down, have read and/or will read,
19 will understand, and will abide by the prohibited
20 discrimination and harassment policy, and these others like
21 the second bullet point, have read and/or will read the AMS
22 employee handbook and agree to abide by it, what is the
23 Company's expectation with regard to that when an employee
24 signs this document?

25 A. Well, the expectation is that if you sign it, you are

1 going to follow through and read it.

2 Q. Does the Company have people available in the event an
3 employee has questions regarding the AMS employee handbook or
4 other policies?

5 A. We do, we do.

6 Q. What kind of employees are available to you?

7 A. Well, the foreman initially. The floor supervisor is
8 well versed on the handbook, myself, my assistant that visit
9 the jobsites. The office personnel are able to clarify any
10 questions.

11 Q. With regard to the reference on page 48 of Respondent's
12 Exhibit 2 in evidence to the fall protection program, is
13 there a written fall protection program that AMS maintains?

14 A. Yes. We do have a written program, yes.

15 **(Respondent's Exhibit 4 marked for identification.)**

16 Q. BY MR. HEARING: Turn to Respondent's Exhibit 4, please,
17 for identification purposes. What is that document, sir?

18 A. That is our fall protection program.

19 Q. Was this in effect at or around the time of
20 Mr. Acevedo's and Mr. Stevenson's employment?

21 A. Yes. It has always been in effect.

22 Q. Is this a document maintained by the Company in the
23 regular course and operation of the business?

24 A. Yes, sir.

25 MR. HEARING: Move the introduction of Respondent's

1 Exhibit 4.

2 MS. LEONARD: No objection, Your Honor.

3 MS. WALKER: No objection.

4 JUDGE ROSAS: Respondent's 4 is received.

5 **(Respondent's Exhibit 4 received in evidence.)**

6 Q. BY MR. HEARING: So when would an employee be presented
7 this document, Respondent's Exhibit 4, if ever?

8 A. At orientation. When we are doing their employee
9 orientation, we're going to be covering fall protection.

10 Q. The Respondent -- I'm sorry, General Counsel's Exhibit
11 2(c), I believe, is a signature page that's in evidence
12 there. That is loose in front of you. It looks like this.

13 A. Um-hum.

14 Q. Could you identify, show us where Mr. Acevedo and/or
15 Mr. Stevenson signed the orientation?

16 A. Well, it looks like Mr. Acevedo was on the top of the
17 line, and Mr. Stevenson on a subsequent page, probably the
18 second one.

19 Q. I think we established to the question by the Counsel
20 for the General Counsel that you don't have any predicate
21 knowledge, no understanding as to who or how these dates were
22 written in on this document; is that correct?

23 A. That's correct, yeah, I have no knowledge.

24 Q. You didn't sign them, did you?

25 A. No, sir, no.

1 Q. What's the Company's practice, though, with regard to
2 how this document is to be filled out?

3 A. Well, I mean if -- this was probably done by
4 Mr. Ramirez. He was going to present the actual employee
5 orientation. He's going to go through the fall protection
6 portion of the orientation when it comes to fall protection
7 equipment, how to use it. If he has a number of people
8 there, he's going to provide them with the copies to sign at
9 the end.

10 Q. Have you personally handled these orientations, these
11 safety orientations?

12 A. I have from time to time.

13 Q. What is your practice, sir, when you do that with regard
14 to the employees' signatures?

15 A. My practice personally?

16 Q. Yes, sir.

17 A. I figure out how many guys I have, and I write down the
18 dates and let them sign the document.

19 Q. In this document 2(a), General Counsel 2(a), is there
20 reference in here to fall protection?

21 A. Which one, sir?

22 Q. 2(a), the first part of that. This is what it looks
23 like on the front.

24 A. Yes, sir.

25 MR. HEARING: It might be helpful if I could approach

1 and give him some clips as well so that they don't get mixed
2 up. May I approach and give him some?

3 JUDGE ROSAS: Sure.

4 MR. HEARING: Thanks. Can I borrow some more clips?

5 THE WITNESS: I think all that goes together.

6 Q. BY MR. HEARING: Yeah, let's put, so that we don't get
7 these things -- this is the one I'm questioning you about.

8 A. Okay.

9 Q. So let's put that -- this is --

10 A. It's part of that.

11 Q. That's (b). But where is 2(c)? Do you have 2(c)?

12 Yeah, that's out of order, so let's put all this together,

13 (a), (b), and (c) in one, all right. And then I'm asking you
14 about (a) right now.

15 A. Very well, thank you.

16 Q. If you'll look through (a). And the question was can
17 you identify where, if any, there is reference to fall
18 protection?

19 A. It's going to be page 5 of 8, when it talks about
20 installation of guardrails, fall hazard, and elevation of
21 6 feet. There is also page 8 of 8, work at elevated
22 platforms.

23 Q. What does it say there in the middle in all caps?

24 A. It says, "Zero tolerance to fall protection violations."

25 Q. What would a fall protection violation be?

1 A. That would be anyone found working at an elevation of
2 6 feet or higher not tied off or using the equipment
3 improperly, which amounts to the same, not being tied off
4 properly.

5 Q. Now, with regard to the Company's general safety and
6 injury prevention policy, does the Company maintain a written
7 policy statement with regard to safety and injury prevention?

8 A. We do.

9 **(Respondent's Exhibit 3 marked for identification.)**

10 Q. BY MR. HEARING: Would you turn in the book in front of
11 you to Respondent's Exhibit Number 3 for identification
12 purposes? What is this document, sir?

13 A. This is basically our policy statement when it comes to
14 safety. It shows me as the safety director, person
15 responsible for enforcing and developing the program, with
16 the signature of the president of the Company, which is
17 Mr. Karp, Richard Karp.

18 Q. So did you prepare this document, Respondent's 3, for
19 the Company to use regarding the safety policy?

20 A. I did.

21 Q. It is maintained in the regular and ordinary course of
22 the operation of the business?

23 A. Yes, sir.

24 MR. HEARING: Move the introduction of Respondent's 3.

25 MS. LEONARD: No objection, Your Honor.

1 MS. WALKER: No objection.

2 JUDGE ROSAS: Respondent's 3 is received.

3 **(Respondent's Exhibit 3 received in evidence.)**

4 Q. BY MR. HEARING: Turning to page 12, sir, the section
5 under personal safety and protective clothing equipment, PPE,
6 do you see that, page 12 of Respondent's 3?

7 A. Sorry, I messed it up.

8 Q. That's all right, when I said 12, you thought I was
9 saying --

10 A. Yeah. What was the tab again, please?

11 Q. It's tab 3, page 12.

12 A. Thank you. Okay.

13 Q. There is a section here on personal safety and
14 protective clothing equipment, PPE. There is -- six bullets
15 down, there is a reference to wearing a full body harness.

16 A. That is correct.

17 Q. The shock absorbing lanyard, retractor in all elevated
18 areas not protected by guardrails.

19 A. Yeah.

20 Q. Never connect two lanyards or a retractor and a lanyard
21 to each other.

22 A. Correct.

23 Q. Again, General Counsel's Exhibit 2, that picture of the
24 harness in 2(b), is that referenced here at page 12 of
25 Respondent's 3 to that harness?

1 A. Yes.

2 Q. What does this mean never connect two lanyards or a
3 retractor and a lanyard to each other?

4 A. It means that the personal protective equipment is to be
5 used for the way it is intended so you cannot loop that
6 lanyard and hook into itself. It would serve no purpose like
7 that. It's not designed to do that.

8 Q. Do you remember there being some reference from
9 Mr. McNett when he found Mr. Acevedo and Mr. Stevenson
10 working above 6 feet tied off incorrectly?

11 A. Yes.

12 MS. WALKER: Objection. Calls for hearsay.

13 JUDGE ROSAS: Let's get some foundation.

14 MR. HEARING: Sure.

15 Q. BY MR. HEARING: Do you remember being questioned by the
16 Counsel for the General Counsel about the basis for the
17 termination of Mr. Acevedo and Mr. Stevenson?

18 A. Yes, sir.

19 Q. And you remember you testified that it was reported to
20 you by I think did you say Mr. Ramirez, what had happened
21 that day?

22 A. Best of my recollection, yes, sir.

23 Q. Did Mr. Ramirez relate to you what he heard from the job
24 foreman?

25 A. He related to me that, well, terrible --

1 JUDGE ROSAS: Is there an objection based on hearsay?

2 MS. WALKER: Yes, there is an objection based on hearsay
3 still.

4 JUDGE ROSAS: Regarding what the foreman told --

5 MS. WALKER: Ramirez.

6 JUDGE ROSAS: -- Mr. Ramirez, who in turn told
7 Mr. Feliz. Okay. Is there going to be any corroboration for
8 this?

9 MR. HEARING: Yes, sir. We're going to call both of
10 them.

11 JUDGE ROSAS: He's going to be called. He's going to be
12 cross-examined under my standards that I generally apply. We
13 permit that. Overruled.

14 Q. BY MR. HEARING: I'm trying to get to your state of
15 mind, sir. When you made the decision to terminate these two
16 individuals, had you heard something about Mr. Acevedo and
17 Mr. Stevenson being improperly tied off?

18 A. I have. In fact, Your Honor, I heard more than that. I
19 wanted to see their signatures that, in fact, they have been
20 trained before me making a decision to dismiss someone. It's
21 normal procedure for me. I want to see paperwork that, in
22 fact, they have been trained before I dismiss someone.

23 Q. All right. But with regard to this reference here on
24 page 12 of Exhibit 3 and the statement never connect two
25 lanyards or a retractor and a lanyard to each other, do you

1 know whether that's what was going on up there on the
2 scaffolding that day?

3 MS. LEONARD: Objection, Your Honor, leading.

4 JUDGE ROSAS: Sustained.

5 Q. BY MR. HEARING: What was reported to you --

6 A. It was reported to me --

7 Q. Well, let me ask the question.

8 A. Sorry.

9 Q. She's objected to the prior question. Let me ask it in
10 the proper form, which is what was reported to you with
11 regard to the improper tie-off of Mr. Acevedo and
12 Mr. Stevenson that day?

13 A. It was reported that one of them was not properly tied
14 off and that the other had connected the lanyard to itself.

15 Q. Is that something that's referred to here as a safety
16 process not to follow?

17 A. Correct.

18 **(Respondent's Exhibit 5 marked for identification.)**

19 Q. BY MR. HEARING: Now, if you turn to Exhibit 5 in the
20 book in front of you for identification purposes,
21 Respondent's 5. Can you identify what this is a picture of,
22 sir?

23 A. This is a photo of a table in our training room where we
24 display fall protection equipment for different new employees
25 coming on board before they go out to work.

1 Q. What is that poster on the wall, sir?

2 A. It's a poster and written in Spanish that basically says
3 six steps -- six simple steps that could possibly save your
4 life.

5 **(Respondent's Exhibit 6 marked for identification.)**

6 Q. BY MR. HEARING: I believe is Respondent's 6, if you
7 turn to that, is that a close-up? Turn to the next page, if
8 you will, please. Is that a close-up of that same poster?

9 A. Yes, it is.

10 MR. HEARING: Move the introduction of Respondent's 5
11 and 6.

12 MS. LEONARD: Your Honor, I'd request a little voir dire
13 on this.

14 JUDGE ROSAS: Sure.

15 **VOIR DIRE EXAMINATION**

16 Q. BY MS. LEONARD: Mr. Feliz, how long has this setup
17 looked exactly like this?

18 A. It has been like that since before I started employment
19 with Advanced Masonry Systems.

20 Q. So this hasn't changed at all in the last 6 years?

21 A. No, perhaps longer.

22 Q. Or 8 years because now this year.

23 A. Perhaps longer.

24 MS. LEONARD: I have no further questions, Your Honor.

25 No objection.

1 JUDGE ROSAS: Respondent's 5 and 6 are received.

2 **(Respondent's Exhibits 5 and 6 received in evidence.)**

3 MR. HEARING: If I can just have a moment, Your Honor?
4 I'm trying to make sure that my next exhibit is exactly as
5 General Counsel's Exhibit 2. I'm not going to burden the
6 record if it is the same.

7 **(Pause.)**

8 JUDGE ROSAS: Back to Exhibit Number 2 in evidence in
9 front of you.

10 MS. LEONARD: GC-2 or Respondent's 2?

11 MR. HEARING: Respondent's 2. I'm sorry.

12 **CROSS-EXAMINATION (cont.)**

13 Q. BY MR. HEARING: If you turn to page 20?

14 A. Page 20 of the same item we --

15 Q. Of number 2, yes, sir, workplace conduct. It's number
16 2, sir, tab 2.

17 A. Okay.

18 Q. Do you see a reference there under the bold, "Note: the
19 following is only a partial listing of unacceptable
20 activities that can result in disciplinary action, including
21 termination," the first bullet there? Would you read that,
22 please?

23 A. Yes, sir. "Violation of AMS security or safety rules or
24 practices; failure to wear required safety equipment; or
25 tampering with AMS equipment or safety equipment."

1 Q. Above that in the paragraph, second paragraph, second
2 sentence says, "If employees have any questions concerning
3 any work or safety rule or any of the unacceptable activities
4 listed below, they should see their manager or supervisor for
5 an explanation." The reference to manager or supervisor
6 vis-à-vis a mason, who would that be?

7 A. That would be the direct supervisor.

8 Q. Which would be by title, not by name?

9 A. The foreman, the jobsite foreman.

10 Q. What would the responsibilities of the foreman on an AMS
11 project be in the period of 2015-2016?

12 A. The responsibilities are the compliance with our
13 contract, with our customer, ensuring quality of work,
14 ensuring employee safety, and ensuring communication to the
15 employees of what's required in terms of safety equipment or
16 areas that they need to work that might be a little bit
17 different. They're responsible for all that.

18 Q. Does the foreman have a responsibility to occasionally
19 give a toolbox talk?

20 A. That's not only an AMS policy, but also our customers
21 that we work for require us to do that as well, yes.

22 Q. What is a toolbox talk?

23 A. Basically those are topics that are selected throughout
24 the Company. I select those topics and send them out to
25 different jobsites to remind employees about safety.

1 Q. We're a little disheveled here. All right, so with
2 regard to what was said to you regarding what Mr. Acevedo and
3 Mr. Stevenson were doing on May 16, 2016, at the University
4 Tampa job that was reported to you, you testified about it,
5 did you inquire as to whether a toolbox talk had been
6 conducted regarding the safety requirements for fall
7 protection that day?

8 A. It's very possible. I can't remember if I did or not,
9 but I inquire specifically to see if the employees have been
10 trained on fall protection because that was going to
11 determine if these employees were going to be dismissed or
12 if, in fact, they needed perhaps to be trained.

13 Q. Do you remember there being some questions about some
14 Hensel Phelps documentation in General Counsel Exhibit 8?

15 A. I do.

16 Q. I believe it was 8. I believe the specific 8(d) and
17 8(e).

18 A. I do.

19 Q. If you could pull those out?

20 A. I've got them.

21 Q. This is in regard to Mr. Brandon Carollo. Do you
22 remember your earlier testimony about him?

23 A. Yes.

24 Q. What is AMS's practice with regard to the report by
25 general contractor about conduct of a mason on one of the

1 general contractor's job that raises a safety concern?

2 A. We follow their policy. Whatever their policy is, we'll
3 follow. We're working for them.

4 Q. If a general contractor reports that one of the masons
5 is not following a safety policy, what is AMS's response if
6 any?

7 A. We're going to have them report us what the incident is
8 and have them follow whatever their policies are.

9 Q. We covered earlier that the fall protection policy,
10 there is a zero tolerance for that. It's in the
11 documentation --

12 A. That is correct.

13 Q. -- signed by Mr. Acevedo.

14 A. That is correct.

15 Q. What does zero tolerance mean?

16 A. It means that any employee witnessed by AMS management
17 in a situation working at an elevation of 6 feet or higher
18 are going to be subject to disciplinary action.

19 Q. And the disciplinary action will be what for that
20 violation?

21 A. Termination.

22 Q. So for Mr. Carollo, these documents apparently were --
23 do you know who filled these documents out?

24 A. No, I don't know who they are. They are not our --
25 whoever filled out these documents, they don't work for AMS.

1 Q. But there is a reference to Mr. Fernando Ramirez down
2 there under the subcontractor --

3 A. Correct.

4 Q. -- reference. Do you recognize that to be his
5 signature?

6 A. That is his signature, yes.

7 Q. Do you know whether Mr. Ramirez personally observed
8 Mr. Carollo, the mason, working at a certain height without
9 appropriate fall protection on?

10 A. No. The report suggests that was actually seen by
11 Hensel Phelps.

12 Q. This would be for what date, this first page here on
13 8(b)?

14 A. That would be for June 24th.

15 Q. And turning to General Counsel Exhibit 8(e), a reference
16 to it looks like Mr. Carollo again. And by the way, these
17 jobs, these are Bethune-Cookman University jobs; is that
18 right?

19 A. They are, yeah.

20 Q. What's the date of this 8(e) at the top there?

21 A. August 20, 2015.

22 Q. I don't remember if you testified to this or not, but is
23 there a signature of any AMS employees on this document?

24 A. Looks like, yes.

25 Q. Can you identify who that is?

1 A. I'm going to say that that's either it sounds like Bob
2 Dutton or Brent McNett, one of the two.

3 Q. If you look over next to the signature, it does look
4 like Bob Dutton, doesn't it, over there to the left?

5 A. Yeah. That looks like that's his name, yeah.

6 Q. And that's above signature of subcontractor, is that
7 right, subcontractor's supervisor?

8 A. Correct. That's above the signature of whoever
9 reported, made this report.

10 Q. Does this document anywhere indicate to you that
11 Mr. Dutton personally observed Mr. Carollo working without
12 fall protection on 8/20/2015?

13 A. No. He's simply acknowledging a report done by the
14 general contract -- by the contractor, so it does not suggest
15 that.

16 Q. Now, working backwards on this General Counsel Exhibit
17 8, composite exhibit 8, I want to turn your attention to
18 8(c), so that's the same group of documents. Let's keep them
19 all together.

20 MR. HEARING: May I approach, Your Honor, make sure he
21 keeps them together?

22 Q. BY MR. HEARING: This is (d) and (e). I'm looking for
23 8(c) now, which is a multi-page document. Set these aside.

24 A. 8(c)?

25 Q. (c), which is about a five-page document. That's 8(a).

1 Set that over here.

2 A. Okay, 8(c).

3 Q. Yeah. All right, so I'm going to set these over here so
4 we don't get confused with those. So this document, my
5 questions are now going to be about that. Do you remember
6 being questioned by the Counsel for the General Counsel about
7 whether you filled this out, and you said you did?

8 A. I do.

9 Q. Do you remember or can you tell us about when you filled
10 this out? Would there be any indication on this document?

11 A. As far as the date, sir?

12 Q. Yes, as to when you filled it out.

13 A. Well, there is a date on the actual report of
14 February 9th.

15 Q. Of what year?

16 A. 2016.

17 Q. So at or around that time is when you would have filled
18 this out?

19 A. That would, that would be correct, yeah.

20 Q. That was before the termination of Mr. Acevedo; is that
21 correct?

22 A. Oh, yeah, well before. Yes, sir.

23 Q. By a number of months?

24 A. Several months.

25 Q. Why was Mr. Carollo terminated?

1 A. Looks for a fall protection violation at elevation of
2 6 feet or higher.

3 Q. That's on page 2 of General Counsel Exhibit 8(c); is
4 that correct?

5 A. That is correct.

6 Q. At the top. And then page 1 of that, who does it say
7 discharged the claimant?

8 MS. WALKER: Objection. The document speaks for itself.

9 JUDGE ROSAS: Sustained.

10 Q. BY MR. HEARING: I mean by -- in relation -- who is
11 Mr. Brent McNett?

12 A. He is the project supervisor for this particular
13 project.

14 Q. Do you know whether Mr. McNett personally observed
15 Mr. Carollo violating the fall protection policy at or around
16 the time that Mr. Carollo was terminated?

17 MS. WALKER: Objection to the extent it calls for
18 speculation.

19 JUDGE ROSAS: Well, that it does. And to the extent
20 that the document refers to that, it speaks for itself.
21 Unless there is going to be hearsay that's corroborated.

22 MR. HEARING: It will be. But I'll ask a different
23 question, Your Honor.

24 Q. BY MR. HEARING: Did you and Mr. McNett talk about the
25 termination of Mr. Carollo as you did about Mr. Acevedo and

1 Mr. Stevenson?

2 A. We did.

3 Q. Can you relate that conversation, please?

4 A. He had said that he had seen Mr. Carollo in a fall
5 protection violation exposed to an elevation of 6 feet or
6 higher, and he had seen it and related to me to be
7 terminated. Based on the paperwork and training that he had
8 been given, obviously he knew about it.

9 Q. Moving backwards then to 8(b), I wasn't clear on this.
10 Is this something that you had input on, or was this solely
11 filled out by Ms. Phelps? This is a seven-page document,
12 8(b). It's not with that group?

13 MR. HEARING: May I assist him?

14 THE WITNESS: You're talking about a document with her
15 signature?

16 Q. BY MR. HEARING: It's a typed up document with her typed
17 out signature. It's not this one. Okay, let's put these in
18 order.

19 A. What was the exhibit number again?

20 JUDGE ROSAS: You have the right -- that's 8.

21 Q. BY MR. HEARING: Okay. So I'll have to clean this up
22 later then. Just leave those there. I need some paperclips.

23 All right, this document, the question was did you
24 review this document and/or assist in the preparation of the
25 document?

1 A. Yeah, I assisted in the preparation of it.

2 Q. What part did you assist with?

3 A. I think just notating the facts, exactly what had
4 happened.

5 Q. And this relates to Mr. Carollo?

6 A. That is correct.

7 Q. Then finally the cover letter, 8(a), the reference to
8 the termination of Mr. Carollo, there is a reference to
9 Mr. Bob Dutton.

10 A. Yes.

11 Q. That's the individual you testified earlier you believe
12 signed --

13 A. Yes.

14 Q. -- 8(e)?

15 A. Yes.

16 Q. Okay. General Counsel Exhibit 2(a), it looks like this,
17 and it's clipped. I did clip that one.

18 A. Okay.

19 Q. What job was this for?

20 A. This is for a project at Westshore.

21 Q. Is that the Westshore, what you refer to as Westshore
22 Yacht Club?

23 A. That is correct.

24 **(Respondent's Exhibit 7 marked for identification.)**

25 Q. BY MR. HEARING: So if you turn to Respondent's

1 Exhibit 7 in the book in front of you?

2 A. Okay, yes, sir.

3 Q. This cover page, what is this?

4 A. That would be the cover page of the same document we've
5 been talking about.

6 Q. For the record, let's identify what you just picked up.

7 A. Yes, sir, of the Exhibit 8, this would be the cover to
8 that Exhibit 8, sir.

9 Q. Let's be clear, it's Exhibit 2(a) for the General
10 Counsel that you're holding?

11 A. 2(a). 2(a), yes, sir.

12 MR. HEARING: To save time if I may, Your Honor, our
13 observation is, is that the General Counsel Exhibit 2(a),
14 etc., is missing multiple pages from what our exhibit is that
15 was produced on it. So I don't know if General Counsel needs
16 a moment to compare it to our Respondent's 7, but I'm going
17 to move the introduction of Respondent's Exhibit 7.

18 MS. LEONARD: We would like that moment, Your Honor.

19 **(Pause.)**

20 MR. HEARING: Move the introduction of Respondent's
21 Exhibit 7.

22 MS. LEONARD: Let's just take a second, but --

23 MR. HEARING: Oh, okay. I'm sorry.

24 **(Pause.)**

25 MS. LEONARD: No objection, Your Honor.

1 JUDGE ROSAS: Respondent's 7 is received.

2 **(Respondent's Exhibit 7 received in evidence.)**

3 Q. BY MR. HEARING: Would you take us through, because I've
4 been somewhat disjointed about it, but take us through what
5 the events were on May 16, 2016, that involved you regarding
6 Mr. Acevedo and Mr. Stevenson.

7 A. I received a call from my assistant, Mr. Ramirez, that
8 he had received a call from Brent from the University of
9 Tampa, that two employees were found in a fall protection
10 violation, not using the equipment properly. And he was
11 concerned because those employees had worked at a different
12 location, the Yacht Club, that's where they came from, and
13 he --

14 Q. At that time, I think it was covered, you weren't
15 provided the employees' names; is that correct?

16 A. No, correct, I didn't know. I was just told that two
17 masons were found.

18 Q. All right, so what did you do?

19 A. I instructed Ramirez to go to the jobsite and
20 investigate and find out if, in fact, they had been properly
21 trained. As the safety director, that would be a failure on
22 our part if we provide people equipment, fall protection
23 equipment without telling them how to use it. So to me that
24 was the top of the priority, find out if, in fact, we have
25 documentation they have been properly trained.

1 Q. Did you ask Mr. Ramirez to inquire as to the union
2 status or non-union status of the employees?

3 A. That was completely irrelevant to the issue, no. My
4 concern was, were these employees trained, because if in fact
5 they had, I was going to dismiss them. And I, in good
6 conscience, I just make a habit of looking at documentation
7 before I make such a decision.

8 Q. Okay. So what was reported back to you vis-à-vis the
9 training for purposes of your decision to discharge them?

10 A. Mr. Ramirez said that yes, that he personally had
11 trained both of those two employees and that he had the
12 documentation.

13 Q. Was General Counsel Exhibit 2(a), (b), and (c), is that
14 the documentation?

15 A. That is correct, yes, that is correct.

16 Q. Then what did you do next?

17 A. I was concerned. I wanted to see it in person. I
18 wanted to rely on him, but I wanted -- I'm about to terminate
19 somebody's employment. I said I want to see the paperwork.
20 So I instructed him to send them home for the day, letting
21 them know the reason why they're being sent home, until I
22 have the opportunity to review the paperwork.

23 Q. Why were you concerned enough to want to review the
24 paperwork before making the decision to terminate them?

25 A. I was about to terminate somebody's employment. I

1 wanted to make sure that it was, in fact, a good reason to do
2 so.

3 Q. Did you review the paperwork?

4 A. I did.

5 Q. Then what did you do?

6 A. I realized that, in fact, they had been properly trained
7 at a previous job. Ramirez told me that when he showed both
8 of the employees the paperwork that they actually signed,
9 they remember, say, oh, yes, I do remember now, we've been
10 trained. Then at that point I was going to terminate the
11 employees. I realized that at least one of them was a union
12 mason by the name; that's the first time I knew of the name.

13 Q. Was that because of the prior correspondence that you
14 had exchanged with him?

15 A. Correct. At that point, I remembered Mr. Acevedo from
16 the correspondence I had had with him before that he was a
17 union member.

18 Q. And so what did you do next?

19 A. In light of that, and I knew that there was a situation
20 going on with the Union, which to be honest I'm not
21 privileged to those details. It doesn't entail my
22 department, but I knew that there was some situation going on
23 with the Union and a vote was going to be made. And before I
24 made the decision to terminate an employee that was a union
25 member, I wanted to ensure that senior management was okay

1 with that decision.

2 Q. So what did you do?

3 A. I got in touch with senior management. I said I'm about
4 to dismiss an employee that is a union member, and I know
5 that there are some dealings with the Union going on, is
6 that -- am I okay making that decision? Typically, I'm given
7 by the president of Advanced Masonry Systems the authority to
8 dismiss whoever I think needs to dismiss. I don't typically
9 call. But on this particular issue, considering the
10 situation, I wanted to make sure that was the right decision.

11 Q. So as of April 29, 2016, the Union had filed a petition
12 to seek an election, and you were generally aware of that?

13 A. It doesn't concern my department. So yes, I did. No,
14 in general, yeah.

15 Q. We had some testimony that you actually spoke to about
16 eight masons on a job in early May; is that correct?

17 A. That is correct. That's really when my involvement in
18 this thing, in this situation began. Before then I was not
19 involved in any way, shape, or form. But the information was
20 being communicated in English and --

21 Q. By whom?

22 A. By the president of the Company.

23 Q. Can you identify him by name, please?

24 A. Yeah, by Mr. Richard Karp. And we wanted to ensure that
25 they understood what was being communicated, so that was at

1 that point my involvement in this thing with the Union.

2 Before then I was not involved in any way.

3 Q. And that conversation with the eight masons where you
4 translated for Mr. Karp, did that occur before you were
5 approached by Mr. Ramirez about what turned out to be
6 Mr. Acevedo and Mr. Stevenson working without proper fall
7 protection?

8 A. Yeah, that was before, absolutely.

9 Q. So hence then you went to senior management to inform
10 them of this, that you were contemplating termination,
11 correct?

12 A. Correct. My report to senior management, especially to
13 Mr. Karp, Richard Karp, was that I had documentation that two
14 employees had been trained and provided the fall protection
15 equipment that they needed to do their jobs, they were found
16 not using that equipment properly or not tie off in a manner
17 that they've been trained, and in light of that I was going
18 to terminate those two employees, but I wanted to make sure
19 that's the decision he wanted me to make considering what was
20 going on.

21 Q. And we know that apparently it was confirmed that you
22 should make that decision because we wouldn't be here maybe
23 today, because they were terminated, right?

24 A. Yeah, correct. I mean I think Mr. Karp put it the best
25 way. He's like our policy is the same policy for everyone

1 regardless of what's going on. He's telling me, he told me
2 if you feel confident that you've been -- that those two
3 employees were properly trained, then I trust you, you make
4 that decision, and yes, move forward with that decision.

5 Q. Did you report that they were personally observed by an
6 AMS foreman violating the safety rule?

7 A. Absolutely, that I would not make a decision to
8 terminate someone's employment unless seen by one of our
9 supervisors. I'm going to terminate somebody's employment, I
10 wanted to see that is something that we've seen, not by
11 somebody else.

12 Q. Okay. So subsequent to Mr. Acevedo's termination, did
13 you have some role with regard to filling out paperwork
14 regarding a claim for unemployment compensation?

15 A. I did.

16 Q. What was your role?

17 A. I believe Mr. Acevedo was -- he called me I think the
18 next day, kind of wanted me to instead of terminating him,
19 just lay him off so he can claim unemployment compensation,
20 which I told him that I couldn't do that. Number one, it was
21 not fair to Mr. Stevenson, which he went -- Mr. Stevenson
22 called me. He was actually very nice about it. He said,
23 listen, I get it. We were wrong. Perhaps you can give me
24 another chance down the road. So when Mr. Acevedo called me
25 wanting me to know if I could instead of terminating him

1 versus laying him off, I said I couldn't do that. Number
2 one, he was caught violating the company policy. And, number
3 two, that would not be fair to the other person I dismissed,
4 Mr. Stevenson.

5 **(Respondent's Exhibit 20 marked for identification.)**

6 Q. BY MR. HEARING: Turn to Respondent's Exhibit 20 in the
7 book in front of you, please. Do you remember there being a
8 claim with the Connecticut Department of Labor?

9 A. Yes.

10 Q. By Mr. Acevedo?

11 A. Yes.

12 Q. Did you provide information for the filling out of this
13 document by AMS?

14 A. Yes.

15 MR. HEARING: I move the introduction of Respondent's
16 Exhibit 20.

17 MS. LEONARD: No objection, Your Honor.

18 JUDGE ROSAS: Respondent's 20 is received.

19 **(Respondent's Exhibit 20 received in evidence.)**

20 Q. BY MR. HEARING: Do you remember preparing an actual
21 letter to the State of Connecticut Department of Labor on or
22 about June 17, 2016?

23 A. Yes, I'm sure I did.

24 **(Respondent's Exhibit 21 marked for identification.)**

25 Q. BY MR. HEARING: Would you turn to Respondent's

1 Exhibit 21, please, the very next page in the book, sir?

2 A. Yes.

3 Q. What is that document?

4 A. That's my response to the State of Connecticut regarding
5 Mr. Acevedo's requesting of unemployment benefits.

6 MR. HEARING: All right, move the introduction of
7 Respondent's 21.

8 MS. LEONARD: No objection, Your Honor.

9 MS. WALKER: No objection.

10 JUDGE ROSAS: Respondent's 21 is received.

11 **(Respondent's Exhibit 21 received in evidence.)**

12 Q. BY MR. HEARING: Are you familiar with, personally
13 familiar with the termination of any other AMS employees for
14 violation of the fall protection policy whom we have not
15 discussed so far today?

16 A. Yes.

17 **(Respondent's Exhibits 33 & 34 marked for identification.)**

18 Q. BY MR. HEARING: Would you turn to Respondent's Exhibits
19 33 and 34 in the book in front of you, sir? Can you identify
20 what Respondent's 33 is, sir?

21 A. This looks to be Mr. Dutton at the Bethune-Cookman
22 project, terminating an employee for not being tied off and
23 on the phone.

24 Q. Mr. Dutton was the one that signed one of those Hensel
25 forms in the other exhibit, correct?

1 A. Correct. He is the one signing the Hensel Phelps
2 incident reporting which somebody was sent home for.

3 Q. Referring to Mr. Carollo?

4 A. Carollo, okay, yes. Thank you.

5 MR. HEARING: Move the introduction of Respondent's 33.

6 MS. LEONARD: No objection, Your Honor.

7 MS. WALKER: No objection.

8 JUDGE ROSAS: 33 is received.

9 **(Respondent's Exhibit 33 received in evidence.)**

10 Q. BY MR. HEARING: Turning to Respondent's 34, please, can
11 you identify what this document is?

12 A. This is another employee dismissal for a safety
13 violation prepared by my assistant, Mr. Ramirez.

14 Q. There appears to be a second page to it. Would you turn
15 to the second page? Is that also related to the same
16 termination?

17 A. Yes, same individual. This is signed by the foreman of
18 the division, and basically it's stating that the employee
19 had broken some fall protection violation.

20 MR. HEARING: Move the introduction of Respondent's 34.

21 MS. LEONARD: No objection, Your Honor.

22 JUDGE ROSAS: 34 is received.

23 **(Respondent's Exhibit 34 received in evidence.)**

24 MR. HEARING: Thank you, Your Honor.

25 **(Respondent's Exhibit 35 marked for identification.)**

1 Q. BY MR. HEARING: Turning to the exhibit related to
2 Richard Haser that you were asked about, which is General
3 Counsel Exhibit 3, it looks like this. It's the same as
4 number 35 in the book before you. Would you turn to 35 for
5 identification purposes, Respondent's 35?

6 A. Okay, yes.

7 MR. HEARING: Well, let me just make sure they catch up.
8 You can see or agree that it's the same document?

9 MS. LEONARD: Yes.

10 MR. HEARING: May I inquire from this document? Is
11 there any objection if I just use R-35 for purposes of this
12 question?

13 MS. LEONARD: No objection.

14 Q. BY MR. HEARING: So just use R-35.

15 A. Okay, I have it.

16 Q. Did you prepare this document, sir?

17 A. No, sir.

18 Q. Do you know who did?

19 A. It appears to be the entry by an employee that we have
20 hired to help Mr. Ramirez at the Bethune-Cookman project, to
21 help him.

22 Q. Do you know who observed Richard working without using
23 fall protection -- oh, who is by Sean Gentry of HP?

24 A. I'm going to assume that Sean Gentry is one of the
25 Hensel Phelps employees at Bethune-Cookman and who I guess

1 Mr. Haser was observed by Sean Gentry of Hensel Phelps, HP,
2 in a fall protection violation.

3 Q. Do you have any knowledge, sir, of anyone at AMS
4 personally observing Mr. Haser working above 6 feet without
5 appropriate protection, fall protection? Did you ever
6 observe Mr. Haser working above 6 feet without appropriate
7 fall protection?

8 A. No, sir.

9 Q. Are you aware of any AMS foreman on that job personally
10 observing Mr. Haser working above 6 feet without personal
11 fall protection?

12 A. No, sir.

13 Q. All right. If you had been advised that Mr. Haser was
14 working on scaffold above 6 feet and not tied off, but not
15 been told whether there was a personal observation by an AMS
16 supervisor or foreman, what would have been your reaction --

17 MS. LEONARD: Objection, Your Honor. Could he rephrase?

18 JUDGE ROSAS: Hold on. Finish the question.

19 MR. HEARING: What would have been your reaction to
20 that?

21 JUDGE ROSAS: Sustained. Rephrase.

22 Q. BY MR. HEARING: Let me ask you this. Had you in your,
23 I guess now it's almost 6, over 7 years work as the safety
24 director for the Company, have you ever advised that any AMS
25 foreman not terminate an employee who had been personally

1 observed working above 6 feet without personal fall
2 protection?

3 A. No. If he's observed by AMS, the policy is termination
4 pending my review of documents that show that we have, in
5 fact, trained this person.

6 Q. So on Mr. Acevedo and Mr. Stevenson's forms, I think it
7 says suspension and sent home for the day. Do you see that?

8 A. Yes, sir.

9 Q. What happened the next day? Did those two individuals
10 show up for work?

11 A. It's my understanding that they showed up to work, and
12 the decision had been made to terminate the two employees.

13 Q. Were their terminations consistent with each and every
14 other incident that you were aware of where AMS personally
15 observed or an AMS foreman or supervisor personally observed
16 an AMS mason working at 6 feet or above without personal fall
17 protection?

18 A. Absolutely. It's consistent with our policy of zero
19 tolerance.

20 Q. The General Counsel Exhibit Number 4, which looks like
21 this and it's a composite exhibit, 4(a) through -- actually,
22 it goes all the way to 19(c), right? I believe those are
23 sort of broken up over there, sir. I started to try to pull
24 them together. May I assist so we get on the same page? It
25 looks like -- it says at the bottom 4(a). There's 15. Does

1 that have 4 on it? No, that's 6, 5, you can set that aside.

2 That's 10.

3 A. Here's 20.

4 Q. Here's 7. Here's 8, 9, and 10. So what else have you
5 got left?

6 A. Okay. That's all 15. This is 5 and 6.

7 Q. All right, so they must be attached somewhere else.

8 Let's go back here.

9 A. That's 3.

10 Q. 8, 7, this is 8 again. This is part of 8. 19(a),
11 19(b), 19(c). This is page 2 or Exhibit 2.

12 MR. HEARING: It's not here in front of him. I don't
13 know how we did that. Perhaps now would be a time for a
14 brief break so we can get this --

15 JUDGE ROSAS: How much more time do you have with the
16 witness?

17 MR. HEARING: Probably about 10 more minutes.

18 JUDGE ROSAS: Why don't we try to complete it?

19 MR. HEARING: I just need assistance then with a copy
20 of --

21 JUDGE ROSAS: Of number 4?

22 MR. HEARING: Of number 4(a) through --

23 THE WITNESS: Yeah, it's not here.

24 JUDGE ROSAS: I'll lend him mine. It's just 4(a)
25 through (c), right?

1 MR. HEARING: No, it's a composite exhibit, if you
2 recall, went all the way to 19(c).

3 MS. LEONARD: No, this --

4 JUDGE ROSAS: 4(a) through (c)?

5 MS. LEONARD: The Bryant one, 4(a) through 4(c).

6 MR. HEARING: Okay.

7 JUDGE ROSAS: 4(a) through (c). Here, you can use mine.

8 THE WITNESS: Thank you, Your Honor.

9 Q. BY MR. HEARING: So with regard to Tim Bryant, the date
10 of this termination is when?

11 A. The date is March 8th.

12 Q. Was Mr. Bryant sent home for the remainder of the day
13 before the termination decision was made?

14 A. Yes.

15 Q. Turning to 4(b), there is a reference here down at the
16 bottom of that grid that says, "Do not hire per Alek." Do
17 you see that?

18 A. Yes, sir.

19 Q. Why did you say do not hire?

20 A. Well, because he had violated a fall protection exposure
21 rule. And after I looked at the document, we seen that he
22 had been properly trained, so I put do not hire.

23 Q. On 4(c), the third page of that that Your Honor gave
24 you, is there a reference to Mr. Acevedo on there?

25 A. Yeah. It says that Mr. Acevedo was one of the witnesses

1 to the incident.

2 Q. Of Mr. Bryant working above 6 feet without being
3 properly --

4 A. Without being properly tied off, correct.

5 Q. Then if you would hand that back to His Honor?

6 THE WITNESS: Thank you, Your Honor.

7 MR. HEARING: Do you have 15(a) there in front of you?
8 It may be up on the ledge there. Do you see that?

9 JUDGE ROSAS: Here. I've got it right here.

10 Q. BY MR. HEARING: This relates to Michael Mosley,
11 correct?

12 A. Yes.

13 Q. And what does this document show?

14 A. It shows that on November 19, per Turbo, which would be
15 Mr. McNett, this employee was terminated.

16 Q. Does it indicate why he was terminated?

17 A. Yes, it has FDT, which would mean failed drug test,
18 which is different, but yeah, failed drug test.

19 Q. So the next document, do you remember being questioned
20 about he failed the post-accident drug test in relation to
21 FDT, that would be 15(b)?

22 A. That is correct, sir.

23 Q. I'll refer you to your earlier testimony about going on
24 site with Mr. Karp and you serving as a translator.

25 A. Yes, sir.

1 Q. You remember that? All right, could you tell us what
2 you recall Mr. Karp said that you had translated into
3 Spanish?

4 A. Basically, the message that was given in English and
5 then translated to Spanish was that they were going to
6 receive a voting ballot and that we wanted them to basically
7 vote one way or the other. And we explained basically the
8 reasons why that was being done.

9 Q. Was anything said about wages during that meeting?

10 A. No mention of wages.

11 Q. Was anything said about insurance during that meeting?

12 A. No mention of insurance.

13 Q. You testified earlier that there were some questions
14 that some of the attendees had.

15 A. Yes.

16 Q. Could you tell us what the questions were?

17 A. There was one question specifically asked by someone, I
18 don't know -- I don't remember exactly which of the
19 employees, asking if their wages were going to go down if
20 they decided not to be part of the Union.

21 Q. Was that question answered by Mr. Karp?

22 A. Yes.

23 Q. After you translated it to him, I presume.

24 A. Right.

25 Q. What was Mr. Karp saying, sir?

1 A. That he could basically promise anything in regards to
2 wages. Wages are determined by market, not by us basically.

3 Q. Were there any other questions that you recall being
4 asked by the attendees that morning?

5 A. They were asking in regards to insurance, if we were
6 going to provide them health insurance.

7 Q. Did you translate that question to Mr. Karp?

8 A. I translated that question to the employee in
9 attendance, basically saying that I have no information in
10 that regard, but based on the current laws of the United
11 States, the Employer have to offer insurance to everybody.
12 But I didn't know the details of that.

13 Q. So you answered that question directly, is that what
14 you're saying, in Spanish?

15 A. I did, yes.

16 Q. Were there any other questions that were posed by the
17 attendees at that meeting?

18 A. They were wondering when they should vote or how they
19 should vote. I said you're going to receive the ballot. You
20 vote yes or no depending on what you want to do.

21 Q. Was Mr. Acevedo there at that meeting?

22 A. He was, yes.

23 Q. Do you recall anybody else that was?

24 A. There was three, three employees that are brothers.
25 There was a gentleman by the name of Carlos Martin and a

1 gentleman by the name of Gerardo Luna.

2 Q. Who are these people? First let's start with the three
3 unidentified brothers. Do you know their names?

4 A. I don't remember specifically their names. Their last
5 name is Camacho.

6 Q. Okay. Then you said there was a Mr. Luna?

7 A. Luna, Gerardo Luna and Mr. Carlos Martin.

8 Q. Were all these employees masons?

9 A. I believe so, yeah. That's the reason why I had them
10 gather, so I -- again, I don't know who is who. But if I'm
11 going to be talking about a vote for masons, I'm assuming
12 that the people before me are masons.

13 Q. Now, that we've identified who they are, do you now
14 recall who asked what questions about wages or insurance?

15 A. No, sir, I can't remember. It's a group of six, seven
16 guys asking, and I can't remember.

17 Q. You're the only one that was speaking to these witnesses
18 in Spanish; is that correct?

19 A. That is correct.

20 Q. Did you in Spanish or in English tell these employees
21 that their pay would go down if they voted yes for the Union?

22 A. Absolutely not, absolutely not.

23 Q. Did Mr. Karp in English ever say that?

24 A. No, sir, he did not.

25 Q. In the context of the question about insurance, did the

1 employee that asked that question indicate that the Union had
2 promised insurance to the employees if they voted yes for the
3 Union?

4 A. I believe somebody had made a comment like that. Again,
5 I told the guys, all I'm telling you is when you get the
6 ballot, voting ballot, just vote yes or no. In regards to
7 insurance, I can't make any promises. But I did say that
8 based on the current laws, it was my understanding the
9 Employer had to provide insurance to all employees, or at
10 least offer it anyways.

11 Q. Did you reference the Affordable Care Act?

12 A. I did, I did. I guess at that point we were in the
13 process of passing around that information. It's a new law
14 that it was my understanding the Employer had to offer
15 insurance to everyone. But once again, I told them I did not
16 know.

17 Q. All right. And --

18 A. In other words, even though I have heard that was the
19 law, I was not even sure. It's not part of my department.

20 **(Respondent's Exhibit 12 marked for identification.)**

21 Q. BY MR. HEARING: Turn to exhibit -- Respondent's
22 Exhibit 12 in that book in front of you.

23 A. Yes, sir.

24 Q. Have you seen that document before?

25 A. I have seen it after -- yes, I have, yes.

1 Q. In relation to this meeting where a question was asked
2 about insurance, do you recall whether this document,
3 Respondent's Exhibit 12, was brought up?

4 A. No, no.

5 MR. HEARING: Your Honor, the only other question or
6 area that I may inquire on would be on the issue of the
7 ballot challenges. This witness also would have some
8 information about that. And I don't know what your
9 preference is or opposing counsel's preference is with regard
10 to whether to handle that now or simply recall the witness.

11 MS. LEONARD: Counsel for the General Counsel would
12 prefer if they recall the witness.

13 MS. WALKER: Petitioner agrees.

14 JUDGE ROSAS: Yeah, as I recall, we discussed --

15 MR. HEARING: That's fine, Your Honor.

16 JUDGE ROSAS: General Counsel is going to put on a prima
17 facie case. Witnesses would testify to the alleged unfair
18 labor practices and the objections. And then we would kind
19 of try to get that all together. You would then put on your
20 defense. Obviously, anything with respect to the objections
21 you've presumably covered with the witness or you will cover
22 on your defense. And then when you're completed, you'll go
23 right into the challenges. If you're calling a witness on
24 your defense vis-à-vis the objections and the witness is on
25 the stand, you can go right into the challenges at that point

1 because you've got that whole swath of order of witnesses
2 before the Charging Party/Petitioner will then respond,
3 and/or the General Counsel will do rebuttal on the case.

4 MR. HEARING: So I have no further questions, then, on
5 the unfair labor practice case. Sorry, you'll have to come
6 back on the other part of the case is what --

7 THE WITNESS: Okay.

8 MR. HEARING: -- His Honor is saying.

9 JUDGE ROSAS: All right, let's take a break. We'll
10 resume at about 2 o'clock.

11 **(Whereupon, at 1:03 p.m., a lunch recess was taken.)**

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1 A F T E R N O O N S E S S I O N

2 (Time Noted: 2:22 p.m.)

3 **JUDGE ROSAS: On the record.**

4 Redirect?

5 MS. LEONARD: Yes, Your Honor. Prior to doing redirect,
6 I just wanted to clear up one more housekeeping matter with
7 the subpoenas, if you'll let me. Earlier, we had discussions
8 with Respondent's counsel about the subpoena production, and
9 the basis of their petition to revoke is that it was
10 burdensome to search so many files. We just wanted to make
11 sure on the record that they had completed that search and
12 provided all the documents or if they had just completed the
13 document through the search that was completed this morning.

14 MR. HEARING: That's correct, Your Honor. The search
15 was indeed completed, and it was indeed burdensome. But as
16 far as compliance, it is complete.

17 MS. LEONARD: Thank you very much.

18 **REDIRECT EXAMINATION**

19 Q. BY MS. LEONARD: Mr. Feliz, good afternoon.

20 A. Good afternoon. I have a question for you about the
21 employee handbook. Is there a Spanish version of the
22 handbook that's given to Spanish-speaking employees?

23 A. I believe there is.

24 Q. Do you recall -- I want to draw your attention to the
25 conversation that you had with Mr. Ramirez on May 16th

1 regarding the two employees who were not tied off properly.

2 Can you take us through that again step by step exactly what

3 Mr. Ramirez said to you and what you said to him?

4 A. Mr. Ramirez had said that he received communication that

5 two masons were not tied off or improperly tied off at the

6 University of Tampa. I told him to go to the site, get with

7 the supervisor on site, and get the specifics.

8 Q. Did you speak with him again that day?

9 A. I did.

10 Q. What happened? What did you say to each other in that

11 second conversation?

12 A. In that second conversation, he, in fact, confirmed that

13 two employees were found in a fall protection violation. I

14 asked if we had documentation that they had been properly

15 trained, and he said yes.

16 Q. Were those the specific words he used, that two

17 employees were found in a fall protection violation?

18 A. Something to that effect, yeah.

19 Q. Thank you very much. With respect to the time that you

20 went to the University of Tampa and spoke to the

21 Spanish-speaking masons there, which you previously testified

22 about, you testified that you went with Mr. Karp and

23 translated for him?

24 A. That's correct. We arrived to the site to translate for

25 the employees, yeah.

1 Q. Is that Richard Karp or Ron Karp?

2 A. Richard Karp.

3 Q. Who is Mr. Richard Karp?

4 A. Mr. Richard Karp? He's sitting right here. He's the --

5 Q. What is his title?

6 A. President of the Company.

7 Q. Who do you report to directly?

8 A. To him.

9 Q. Do you recall saying to the employees at that time that
10 the election was to determine whether things stayed the way
11 they were with the union members or not?

12 A. I'm not sure if I specifically used those words, but
13 basically that the election was to see if things stayed with
14 the Union the same it was, something to that effect.

15 Q. Do you recall giving an affidavit, presumably in your
16 office in Sarasota, with the Board Agent Mark Heaton last
17 August?

18 A. I do.

19 MS. LEONARD: Your Honor, may I approach?

20 JUDGE ROSAS: Show counsel what you have.

21 Q. BY MS. LEONARD: If I could direct your attention to
22 page 1, lines 13 and 14, the first complete sentence there?

23 A. Okay.

24 Q. Could you read that for me, please, beginning with "I
25 told"?

1 A. "I told them that the election was to determine whether
2 things stayed the same or were with the union members or not,
3 and to please send the votes in one way or the other."

4 Q. Thank you. Do you recall saying that to Mr. Heaton?

5 A. To who?

6 Q. To Mr. Heaton, the Board agent, when you gave the
7 affidavit?

8 A. Yes.

9 Q. When you gave that affidavit, you swore that that was
10 true and correct to the best of your knowledge at that time,
11 correct?

12 A. Correct, yes.

13 Q. You read that carefully and reviewed it with counsel?

14 A. Correct.

15 MS. LEONARD: Thank you very much.

16 MR. THOMAS: Just for the record, object to improper
17 impeachment.

18 MS. LEONARD: I have no further questions for Mr. Feliz.

19 JUDGE ROSAS: Charging Party?

20 MS. WALKER: Yes, Your Honor.

21 **REDIRECT EXAMINATION**

22 Q. BY MS. WALKER: Mr. Feliz, my name is Kim Walker. I
23 represent the Petitioner in this case. I have a few follow-
24 up questions for you.

25 A. Thank you.

1 Q. What does the training on fall protection consist of?

2 A. Say that again, please?

3 Q. You had testified earlier that AMS provides fall
4 protection training to its employees, correct?

5 A. Correct.

6 Q. What exactly does that training consist of?

7 A. Consists like explaining to them of what elevations they
8 need to be tied off, how to use the equipment, how to put it
9 on, and when they should use different type of equipment that
10 is applicable to different situations.

11 Q. Is that done in an orientation training class?

12 A. That is correct.

13 Q. Do you provide safety training to your foremen and
14 superintendents in addition to your journeymen and masons?

15 A. Absolutely we do.

16 Q. Did you provide this training to Mr. Brent McNett?

17 A. Either I provided directly, or he has since then taken
18 his extra certifications with OSHA that would give him the
19 same training I would give him.

20 Q. On earlier questioning, I believe you testified about
21 the personal protective equipment that's necessary for the
22 fall protection and other safety issues on the jobsite; is
23 that correct?

24 A. Correct.

25 Q. Is AMS required to provide that personal protective

1 equipment?

2 A. Not only is it an AMS requirement, it's an OSHA
3 requirement the employer has to provide the equipment.

4 Q. What all does that include in regard to fall protection
5 equipment?

6 A. Harness, retractable, anchor point, depends on the
7 application.

8 Q. Who is responsible for having all of that equipment on
9 each jobsite?

10 A. Well, the foreman is responsible for requesting it, if
11 he needs the equipment.

12 Q. When is that request usually made by the foreman?

13 A. Prior to the time they're going to need it.

14 Q. Would it be requested before the job started on site?

15 A. At times.

16 Q. And then would it be maybe a supplement request if the
17 job increased with the number of employees or changed or a
18 length of time changes?

19 A. Sure.

20 Q. When the foreman makes the request, who is responsible
21 for getting the equipment to the jobsite?

22 A. Either me or my assistant.

23 Q. That's true for every jobsite of AMS?

24 A. Pretty much, yeah.

25 Q. What would make the difference?

1 A. Let's say, for instance, they forgot that they needed to
2 have personal protective equipment tomorrow. I might say
3 it's late in the day, go out and buy yourself.

4 Q. You could instruct a superintendent to go and buy the
5 equipment themselves from any particular vendor?

6 A. We have specific vendors to get equipment from.

7 Q. What vendors do you generally use?

8 A. It could be White Cap. It depends on the location. All
9 over the state we have several, White Cap, Southern Safety,
10 Safety Supplies, there's several.

11 Q. Do you have an approximation of how often a
12 superintendent would need to go get that equipment to put to
13 a jobsite as opposed to you or your assistant?

14 A. Very seldom.

15 Q. Have you ever received a complaint for an employee on
16 the jobsite about an unsafe condition in regards to fall
17 protection?

18 A. If I have received a complaint? Yes.

19 Q. Would those complaints be that some of that material was
20 not on a jobsite?

21 A. No, not that type of complaint. We have never received
22 such a complaint.

23 Q. Have you ever received a complaint about scaffolding not
24 being assembled properly?

25 A. No.

1 Q. Do you always train employees before they commence
2 employment with AMS?

3 A. We do, yes.

4 Q. Would there ever be a situation in which an employee
5 would start work before safety training was provided or that
6 it would be provided at a later date?

7 A. Possibly. I'm not sure of a specific situation, but I
8 guess there is always an exception.

9 Q. How often are employees in the training room of AMS?

10 A. When they need training.

11 Q. How often do they receive training in that training
12 room?

13 A. That's -- I don't know the answer to that, Judge. It
14 depends on the need. There is not a specific -- if the job
15 requires training, we're going to provide it. That depends.

16 Q. Would the training other than the toolbox discussions, I
17 believe they were called toolbox meetings --

18 A. Right.

19 Q. -- that you testified to earlier, other than those
20 toolbox talks, how often are employees called into that
21 training facility at AMS?

22 A. We do work all over the state. At times it's not
23 reasonable to bring people all the way from the state to
24 Sarasota. We conduct the training at the jobsite.

25 Q. And the training center I'm referring to, is that the

1 one that we saw the picture of the personal protective gear
2 for fall protection? I believe it was Respondent's
3 Exhibit --

4 MR. HEARING: It was 5.

5 Q. BY MS. WALKER: Respondent's Exhibit 5, if you want to
6 refer to that.

7 A. Yes.

8 Q. So when I refer to the training center, I'm referring to
9 that facility.

10 A. Okay. To this room, right.

11 Q. How often are employees at that facility?

12 A. Again, there is no particular time frame. It's going to
13 depend on the requirements, jobs, what's -- depends on what's
14 happening.

15 Q. If you hire an employee for the first time, will they
16 receive their training at this facility, or could they
17 receive it on the jobsite?

18 A. No, they could receive it at the jobsite. If the
19 jobsite is in Sarasota, they will probably come here. If the
20 jobsite is for instance elsewhere, far away from the office,
21 it is done at the jobsite.

22 Q. And the training facility is located in Sarasota; is
23 that correct?

24 A. The training room, yes.

25 Q. Yes, okay. For the Tampa jobsites, where would the

1 training be given for newly hired employees?

2 A. Probably at the jobsite.

3 Q. I believe you gave some testimony earlier that you were
4 given permission from upper management to discharge employees
5 as you see fit. Was that -- is that correct?

6 A. There is no permission given. That comes with the
7 position. That's what I do.

8 Q. But I believe that you testified that in the case of
9 Mr. Acevedo and Mr. Stevenson, that you talked to someone in
10 upper management about discharging those employees at that
11 particular time; is that correct?

12 A. That is correct.

13 Q. Who did you talk to in upper management?

14 A. I spoke to Mr. Richard Karp.

15 Q. Did you speak with anyone else?

16 A. With Mr. Ron Karp.

17 Q. Who is Mr. Ron Karp?

18 A. Mr. Ron Karp is another principal of the Company.

19 Q. He's the principal of the Company. And is Mr. Richard
20 Karp the president, or is he a principal also?

21 A. Principal also.

22 Q. Which one is the president of the Company?

23 A. Mr. Karp, Richard.

24 Q. Does Mr. Ron Karp have a title other than principal?

25 A. Vice president perhaps. I don't keep up with titles.

1 They're senior management of the Company; that's who they
2 are.

3 Q. In looking at some of the paperwork that was introduced
4 by Respondent in regards to some terminated employees, does
5 the reason for termination matter when AMS considers rehiring
6 or recalling an employee?

7 A. Does the reason for termination matter?

8 Q. Yes.

9 A. Absolutely, yes.

10 Q. What would be a reason for not rehiring an employee?

11 A. There could be many reasons. A fall protection
12 violation would be one of the reasons not to want to rehire
13 someone. Misconduct, threatening other people, violence;
14 there could be many different reasons.

15 Q. Is that applied consistently?

16 A. It is.

17 Q. You testified earlier about in relation to the discharge
18 of Mr. Acevedo and Mr. Stevenson, that before you issued any
19 kind of termination, you wanted to check the safety training
20 records; is that correct?

21 A. Yes.

22 Q. Have there been cases when you've checked employees'
23 records and they were not properly trained?

24 A. I can't recall of any.

25 Q. Other than yourself, is there any other current employee

1 of AMS with OSHA 500 training?

2 A. No.

3 Q. Mr. Ramirez does not have OSHA 500 training; is that
4 correct?

5 A. That is correct. He has the OSHA 30, which would make
6 sense for an assistant to have.

7 Q. In earlier testimony, I believe you testified that on a
8 job -- you accompanied Mr. Ron Karp or Mr. Richard Karp to a
9 jobsite to talk to employees; is that correct?

10 A. Yes.

11 Q. Did Mr. Karp go to any other jobsites other than the one
12 you testified about?

13 A. I stayed at that jobsite. He left. Whether he did or
14 not, I don't know. I assume he probably did, but I don't
15 know.

16 Q. What time of day was it when you met with the employees
17 at University of Tampa?

18 A. I believe it was at lunchtime.

19 MS. WALKER: That's all I have. Thank you.

20 JUDGE ROSAS: Any follow-up?

21 MR. HEARING: Just a couple, if I may.

22 **RECROSS-EXAMINATION**

23 Q. BY MR. HEARING: You said that -- you were asked about
24 whether you had received any complaints by employees about
25 unsafe conditions. And you said yes. But then you were

1 asked about two particular types, and you said no. What type
2 of complaint do you recall ever receiving from an employee
3 about unsafe conditions on a jobsite?

4 A. Typically, they complain about the porta potty not being
5 clean enough on a regular basis. That's not something I
6 control. The general contractor is the person that might
7 deal with that. And that's typically things I hear; they
8 need to come and clean the porta potty or whatnot.

9 Q. Looking at General Counsel 2(a) or any part of
10 exhibit -- General Counsel Exhibit 2(a), (b), or (c) tell you
11 where the training was for --

12 A. Thank you, Your Honor, thank you.

13 Q. -- the new employee training was that's referenced in
14 that exhibit?

15 A. It's project location Westshore, which is just Westshore
16 Yacht Club, Westshore.

17 Q. Does that indicate to you what's where the training
18 occurred?

19 A. That's where the training occurred.

20 Q. All right. Was there any training -- I'm sorry. Was
21 there any work started by AMS masons at the Westshore Yacht
22 Club prior to this training, to your knowledge?

23 A. Not to my knowledge, no.

24 Q. You said there might be an exception of employees
25 actually starting work before training, but can you think of

1 any?

2 A. I can't think of -- no, I can't think of any. I guess
3 it's a possibility, but I can't think of any, no.

4 MR. HEARING: Nothing further, then.

5 JUDGE ROSAS: Okay, thank you, sir. You're excused. Do
6 not discuss your testimony with anyone until you're recalled
7 in the case. All right?

8 THE WITNESS: Will do, sir.

9 JUDGE ROSAS: Or otherwise confer with counsel regarding
10 other aspects of the case that he would explain to you.
11 Okay?

12 THE WITNESS: Thank you, sir, yes.

13 **(Witness excused.)**

14 JUDGE ROSAS: All right, next witness?

15 MS. LEONARD: Your Honor, the Counsel for the General
16 Counsel is now going to call witness Walter Stevenson. I'm
17 going to go fetch him.

18 JUDGE ROSAS: Okay.

19 **(Pause.)**

20 JUDGE ROSAS: Sir, please raise your right hand.

21 (Whereupon,

22 **WALTER L. STEVENSON**

23 was called as a witness by and on behalf of the General
24 Counsel and, after having been duly sworn, was examined and
25 testified as follows:)

1 JUDGE ROSAS: Please have a seat.

2 MS. LEONARD: Were we on the record?

3 JUDGE ROSAS: You announced his name on the record.

4 MS. LEONARD: I did. I just -- because Mr. Bontempo is
5 out of the room. Okay, we were back on.

6 JUDGE ROSAS: Okay. Can you state your name and spell
7 it, please?

8 THE WITNESS: Walter Lee Stevenson, W-a-l-t-e-r L-e-e
9 S-t-e-v-e-n-s-o-n.

10 JUDGE ROSAS: And your address, sir?

11 THE WITNESS: 126 North Independence Highway, Inverness,
12 Florida 34453.

13 **DIRECT EXAMINATION**

14 Q. BY MS. LEONARD: Good afternoon, Mr. Stevenson.

15 Mr. Stevenson, what is your profession?

16 A. I'm a mason.

17 Q. How long have you been a mason?

18 A. 35 years.

19 Q. Are you currently a member of the Bricklayers and Allied
20 Craftworkers Union?

21 A. No.

22 Q. Have you ever been a member?

23 A. No.

24 Q. Have you ever worked for the Respondent in this case,
25 Advanced Masonry Systems?

1 A. Yes.

2 Q. Are you currently employed by AMS?

3 A. No.

4 Q. When were you most recently employed by AMS?

5 A. It was -- it's been about a year.

6 Q. Does the time frame of January 2016 to May 2016 sound
7 right?

8 A. Yeah.

9 Q. What jobsite or jobsites did you work at for AMS at that
10 time?

11 A. I worked at the Tampa, I think it was called the Tampa
12 Bay Golf -- no, Yacht Club, and the Tampa University.

13 Q. Who was your immediate supervisor at the yacht club
14 project?

15 A. His name as -- they call him Turbo. I think his name is
16 Brent. I don't know his last name.

17 Q. Is that Mr. McNett?

18 A. Yes.

19 Q. Who was your supervisor at the University of Tampa
20 jobsite?

21 A. Coy.

22 Q. When did you switch between the Westshore Yacht Club and
23 the University of Tampa?

24 A. I was at the yacht club about 2 months, and then I went
25 to the university.

1 Q. What were you building at the University of Tampa
2 jobsite?

3 A. I believe it was an addition, a brick building.

4 Q. What specifically were you building when you first got
5 there, like exterior, interior?

6 A. It was exterior.

7 Q. So laying the brick on the walls?

8 A. Yes.

9 Q. How many stories was the building you were building
10 there, do you recall?

11 A. It was one story, but it was very tall. Well, actually,
12 it was two stories. There was a big lobby on the side, and
13 then there was stairwells that went up into the second floor,
14 so, yeah, it was two floors.

15 Q. But it was a very tall building, you said.

16 A. Very tall, yes.

17 Q. Did you ever work anywhere besides the exterior at the
18 University of Tampa?

19 A. Yeah, I worked interior.

20 Q. What were you working on, on the inside?

21 A. Columns.

22 Q. Were those columns on the first floor or the second
23 floor you described?

24 A. First floor.

25 Q. Were there columns on both floors or just the one?

1 A. There were columns on both floors. Actually, at the
2 very -- the last couple of days I worked on the second floor.

3 Q. About how long after you transferred to the University
4 of Tampa jobsite did you move indoors to work on the columns,
5 do you recall?

6 A. Approximately 3 weeks.

7 Q. How many masons did it take to build each column?

8 A. Two.

9 Q. Did you work in the same pairs every day, or did you
10 rotate?

11 A. I rotated.

12 Q. Were you paired with anyone more often than anyone else?

13 A. I was partnered with -- no, it was, it was a mixture.

14 Q. Were you ever paired with Luis Acevedo?

15 A. Yes.

16 Q. Were you paired with him more than once?

17 A. Yes.

18 Q. About how tall were these columns that you were building
19 at the University of Tampa on the first floor and then on the
20 second floor?

21 A. 12, about 12, yeah -- separately you mean? The bottom
22 floor, the bottom floor I think was a couple of feet higher,
23 but they were approximately 12 feet, 15 feet.

24 Q. For the record, how tall are you?

25 A. 6'2".

1 Q. Thank you. Were you aware of a union campaign going on
2 amongst AMS's masons during your time there in 2016?

3 A. Yes.

4 Q. How did you become aware of it?

5 A. I was handed -- I was actually mailed information about
6 it.

7 Q. What did that information say? Who did it come from?

8 A. It came from AMS.

9 Q. And what did it say?

10 A. So there was going to be a union vote. The paperwork
11 that I received that I remember said I had to have my
12 paperwork back in by a certain time.

13 Q. Did you ever hear any supervisor speak to the masons
14 about the union campaign while you were at work?

15 A. Very little.

16 Q. Who did you hear speak about it?

17 A. The foreman.

18 Q. Which foreman?

19 A. That would be Mr. McNett.

20 Q. What did you --

21 JUDGE ROSAS: Mr. who?

22 THE WITNESS: McNett is his name.

23 MS. LEONARD: Yeah, Turbo.

24 JUDGE ROSAS: McNett?

25 THE WITNESS: Turbo.

1 MS. LEONARD: Yeah, his nickname is Turbo, and his name
2 is Brent McNett.

3 MR. HEARING: It's Brent McNett.

4 MS. LEONARD: B-r-e-n-t M-c-N-e-t-t.

5 Q. BY MS. LEONARD: And, sorry, what did you hear
6 Mr. McNett say when he would speak about the Union?

7 A. He said I can't say a whole lot about it, I'm not
8 allowed to, that it probably won't be good for wages.

9 Q. Did Mr. McNett say these things on one occasion or
10 multiple times?

11 A. I can't say. I heard him say it one time I know.

12 Q. Do you recall where it was that you heard him say that?

13 A. We were having a meeting, a safety meeting in front of
14 the Conex.

15 Q. Which jobsite was that at?

16 A. At the university.

17 Q. The Conex is -- what is the Conex?

18 A. It's a big metal container, shipping container like that
19 they store equipment in.

20 Q. Is it only for equipment, or is there also an office
21 inside for AMS?

22 A. It's not really an office, no.

23 Q. Was there a separate trailer that had an office for AMS?

24 A. I think they were using the GC's office maybe. I don't
25 think they had an office there that I know of. I don't

1 recall.

2 Q. Do you recall what time of day it was that you heard
3 Mr. McNett say what you heard him say outside the Conex?

4 A. It was at the -- I think they had their safety meetings
5 on Monday mornings, beginning of the week I believe.

6 Q. Was it during a safety meeting or afterwards?

7 A. No, it was during a safety meeting.

8 Q. Do you recall about how long after you had transferred
9 to UT it was that you heard Mr. McNett say that?

10 A. About 2 weeks.

11 Q. Do you recall about how long it was before you were
12 discharged by AMS that that happened?

13 A. About the same period of time.

14 Q. So you would say overall you were at the University of
15 Tampa jobsite for how long?

16 A. Between 3 and 4 weeks.

17 Q. Was anyone else present when Mr. McNett said those
18 things to you outside the Conex at the safety meeting?

19 A. The whole crew was there.

20 Q. Did you ever receive any training on fall protection
21 from the Employer?

22 A. Vaguely, yes.

23 Q. When was that?

24 A. That was at the yacht club.

25 Q. Do you recall what month it was?

1 A. No, but it was hot.

2 Q. For the record, it's Florida, so it's pretty much always
3 hot.

4 A. Yeah.

5 Q. 80 degrees today. Anyway, where -- about how far along
6 was the progress of the yacht club at that point?

7 A. Well, they were far into it because I started -- I
8 didn't start at the beginning of it. So they had one, they
9 had one building completed, another one about topped out, and
10 two more in progress.

11 Q. What was the project there to build?

12 A. It was condominiums.

13 Q. So where specifically at the yacht club jobsite did this
14 take place, this training?

15 A. In a field by the Conex.

16 Q. Who gave the training?

17 A. One of the foremen. I don't remember his name. I think
18 a guy named Mario came over and talked to everybody.

19 Q. Might that be Mr. Mario Morales?

20 A. I think so, yes.

21 Q. Was anyone from AMS's safety department there for the
22 training?

23 A. Alek was there.

24 Q. How long did this training last?

25 A. Roughly 30 minutes.

1 Q. What did Mr. Feliz and Mr. Morales say? How did they
2 train you at that training? What were you trained on?

3 A. Basically verbally. We were shown different safety
4 apparatuses, told vaguely how to hook it up.

5 Q. What specifically did they say about --

6 A. They said don't hook this to this, and don't hook this
7 to the scaffold.

8 Q. When you say this, is that a specific piece of
9 equipment?

10 A. Yes.

11 Q. What is that?

12 A. The yoyo.

13 Q. Who is the yoyo in layman's terms?

14 A. It's a retractable fall protection.

15 Q. If you could in that stack of papers there, the first
16 exhibit should be General Counsel's Exhibit 2.

17 A. Right here?

18 Q. If you go about eight pages deep in there, you should
19 see a flyer with a diagram of a harness and some other stuff
20 on it. It will be General Counsel Exhibit 2(b).

21 A. Yeah, that's the harness.

22 Q. Do you see that page? Does that -- the top half of the
23 page, does that look familiar to you?

24 A. Up here?

25 Q. Yeah.

1 A. Yes.

2 Q. Have you seen this flyer before?

3 A. Have I seen this?

4 Q. Yes, that particular piece of paper.

5 A. Not this particular one, no.

6 Q. Were you given any paper at the training that day, at
7 the yacht club?

8 A. I was given one paper to sign and say I was trained.

9 Q. If you could take a second and examine the diagram of
10 how to hook up on that flyer there, the top half, does that
11 reflect how you were trained that day?

12 JUDGE ROSAS: Referring to 2(b)?

13 MS. LEONARD: Yes, referring to 2(b).

14 THE WITNESS: Not really, no.

15 Q. BY MS. LEONARD: So if you could as specifically as
16 possible describe how the training you received at the yacht
17 club is different from that naming the pieces of equipment
18 and the tie-off point.

19 A. I was told if I couldn't use a Miller tie, which is an
20 anchor with a loop on it that you pull, it's got a spring on
21 it and you pull it up. You drill a hole into the concrete,
22 and it goes into the concrete then retracts, and you hook
23 your lanyard or your yoyo to that. Or if you couldn't hook
24 on that, you had to find something above to hook to. We were
25 given a strap, and we were told not to, not to hook the --

1 let's see, there was a short lanyard with a big hook on it,
2 and we were told not to hook those two together. We had to
3 hook the yoyo to the long strap.

4 Q. The long strap, what material is that made out of?

5 A. Nylon.

6 Q. What is the yoyo -- again, sorry, that refers to a sort
7 of retractable thing, or is that a separate piece?

8 A. No, the yoyo retractable is separate.

9 Q. What are those made out of?

10 A. Cable, a big block with a spring in it. You pull the
11 cable out, and it locks.

12 Q. That's all metal, the whole thing?

13 A. Yeah. It locks when you fall. It doesn't lock when you
14 pull it out.

15 Q. Okay, got it. Thank you very much. Did the people
16 giving the training demonstrate with actual equipment at the
17 yacht club?

18 A. No, they didn't demonstrate. They just said this and
19 this and basically showed it. There was no scaffold. There
20 was no ties. There was no actual training, on the job
21 training with it. It was basically all verbal and show-and-
22 tell.

23 Q. How long had -- do you recall if you had already been
24 working at the jobsite prior to receiving that training?

25 A. Yes, I was.

1 Q. Were you using fall protection prior to receiving that
2 training?

3 A. At the yacht club, yes.

4 Q. How did you know how to use fall protection training
5 prior to receiving -- sorry, withdrawn.

6 How did you know how to use fall protection before you
7 received the training at the yacht club?

8 A. I've used it before.

9 Q. Are you OSHA certified?

10 A. I am now.

11 Q. Were you at the time?

12 A. No.

13 Q. Was anything said at the time about attaching your
14 safety harness to scaffolding at the yacht club training?

15 A. Pardon me?

16 Q. You mentioned that you were instructed how to put this
17 spring locking thing in the floor or the ceiling if you had
18 to. Was anything said about how to attach to the
19 scaffolding?

20 A. No.

21 Q. Have you ever received any other safety training from
22 AMS?

23 A. Actually, we were told not to attach to the scaffolding.
24 You're not supposed to attach to the scaffolding.

25 Q. Why is that?

1 A. It's considered unsafe.

2 Q. Do you know why that is?

3 A. Because it's not an anchor. The scaffolding is not
4 permanent. It's not a permanent anchor.

5 Q. In your experience as a mason, have you ever hooked your
6 harness to scaffolding before?

7 A. Yes.

8 Q. Have you ever been trained to do so by any other
9 employers?

10 A. I have not been trained to do it, but I've been told
11 you've got nothing else, hook to that.

12 Q. Were you ever told that by anyone at AMS?

13 A. No.

14 Q. There was no other time while you worked for the
15 Employer that you received fall protection training?

16 MR. HEARING: Objection, leading.

17 JUDGE ROSAS: I'm sorry, repeat that?

18 MS. LEONARD: I'm sorry, it was.

19 Q. BY MS. LEONARD: Was there any other time that you
20 received fall protection training while you worked for AMS?

21 A. No.

22 Q. Did the Employer do any kind of regular -- you mentioned
23 Monday morning meetings. What was the content of those
24 meetings?

25 A. Usually safety, safety concerns, anything that had to do

1 with if there was general paperwork that needed to be in a
2 certain time. It was basically crew stuff for the whole
3 crew.

4 Q. About how long would those meetings last?

5 A. Generally, about 15 minutes.

6 Q. Do you recall Monday, May 16, 2016?

7 A. No, not really.

8 Q. If you could in that stack turn to General Counsel's
9 Exhibit Number 6? They're tabbed, and they should be in
10 order.

11 A. 2, 3, 4, oh, I see 6, okay.

12 Q. Do you recognize that document?

13 A. Yes.

14 Q. What is the date on that document?

15 A. That is 5/16/16.

16 Q. Does looking at that document refresh your recollection
17 of that day, May 16th?

18 A. Yes.

19 Q. What happened -- was there a safety meeting on Monday,
20 May 16th?

21 A. I think so, yeah.

22 Q. Do you remember any of the content of that safety
23 meeting?

24 A. Content of that day was we were told from now on
25 everybody tie off.

1 Q. At that point, you were working inside, is that correct,
2 as you previously testified?

3 A. Yes.

4 MR. HEARING: Objection, leading.

5 JUDGE ROSAS: Repeat the question?

6 Q. BY MS. LEONARD: As you previously testified, you were
7 working inside the University of Tampa at that point?

8 A. Yes.

9 JUDGE ROSAS: Overruled.

10 Q. BY MS. LEONARD: So the entire time you've been working
11 inside, what were you working on?

12 A. Double scaffolding. But it was only -- we had double
13 scaffold, but it was to raise the boards up. We were only
14 working on a 6-foot jack. We were 6 feet off the ground. So
15 when we had to top out, the only time we had to raise up like
16 one ladder was just to get the last couple of rows of brick
17 at the top of the column.

18 Q. You said this was -- what were you told at the safety
19 meeting that day?

20 A. We were told everybody else -- everybody tie off from
21 now on.

22 Q. Had you previously been tying off at the job?

23 A. No.

24 Q. Had anyone said anything to you about tying off at that
25 job prior to that?

1 A. No.

2 Q. Did you tie off while you worked outside on the exterior
3 walls?

4 A. No.

5 Q. So looking back again at General Counsel's Exhibit
6 Number 6?

7 A. Okay.

8 Q. Do you recall when you were given that notice?

9 A. Yeah. I was given that notice about an hour after
10 the -- hour or so after the meeting.

11 Q. Who gave it to you?

12 A. Brent.

13 Q. That's Mr. McNett?

14 A. Yes.

15 Q. What did Mr. McNett say to you when he gave you the
16 notice?

17 A. He said come down here. He come up there and told me
18 and Luis both, you come here and you come here, called us
19 down up front. He said sign this, you're going home. I said
20 why? He said because you weren't tied off properly.

21 Q. How were you tied off that day?

22 A. I had my yoyo hooked to the scaffold.

23 Q. Did Mr. McNett say how you were supposed to instead be
24 tied off to the scaffolding?

25 A. Yes. He said I should have taken my strap and wrapped

1 it, cinnamon rolled it around the scaffold, and hooked one
2 end through the other, cinnamon rolled it and hooked to the
3 end, the loop on the end.

4 Q. The one strap?

5 A. To the -- yeah, there is the wide strap, the long strap.
6 It's a long strap.

7 Q. Would that be the lanyard in the diagram?

8 A. Well, yeah, basically. Probably, yeah.

9 Q. When you say cinnamon rolling, what does that mean?

10 A. You're supposed to -- it's two big loops on each end.
11 And you loop -- I think you put one through the -- I didn't
12 even know they would fit like that, but I guess one end might
13 be smaller, but you're supposed to put one end through the
14 other, pull it tight, and then wrap it around I guess, and
15 then hook to that end.

16 Q. So when you say cinnamon rolling, you mean wrap it
17 around and around like a spiral?

18 A. Like a cinnamon roll, yeah.

19 Q. Was that the word Mr. McNett used, cinnamon roll?

20 A. I don't recall.

21 Q. In your experience as a mason, have you ever been told
22 to tie off a harness like that?

23 A. No.

24 Q. Did you say anything to Mr. McNett at that time?

25 A. I said why weren't we told that before we got up there?

1 You just said tie off.

2 Q. Did Mr. McNett say anything back?

3 A. He said -- as a matter of fact, he said it's not in my
4 hands. He said I was told to send you home, and you're in
5 review or something like that.

6 Q. Did you go back to work the next day?

7 A. I was on my way to work as a matter of fact, and I was
8 called and told not to come in by Luis. I went anyway
9 because I wanted to talk to them and find out why I was
10 fired.

11 Q. About what time was it that you spoke with Mr. Acevedo
12 on the phone?

13 A. It was about quarter to 7:00.

14 Q. Did you call him, or did he call you?

15 A. He called me.

16 Q. What did he say when he was on the phone with you?

17 A. He said don't bother going; we're fired.

18 Q. So when you went into the jobsite at the University of
19 Tampa, what did you do next?

20 A. I went and talked to Brent.

21 Q. What did Mr. McNett say?

22 A. Basically the same thing as the day before. He said
23 you're terminated for not tying off properly, and it came
24 from above; it's not me.

25 Q. If you could just one more time look at General

1 Counsel's Exhibit Number 6 right there?

2 A. Okay.

3 Q. Does that document -- got it? Does that document
4 accurately reflect that this was your first warning for fall
5 protection?

6 A. Yes.

7 Q. Had you received any verbal warnings about fall
8 protection prior to that day?

9 A. No.

10 Q. Have you ever received any written warnings of any kind
11 prior to receiving that notice from AMS?

12 A. No.

13 Q. Are you aware of any other employees who had been
14 disciplined by AMS for not wearing fall protection without
15 having been terminated?

16 A. For the same thing I was?

17 Q. Yes.

18 A. Only Luis.

19 Q. No one at the yacht club?

20 A. I think that, yeah, I don't know who they were, but I
21 just heard rumors that there were people that were terminated
22 for that.

23 MS. LEONARD: Thank you very much. I have no more
24 questions for Mr. Stevenson.

25 JUDGE ROSAS: Charging Party?

1 MS. WALKER: Just a few, Your Honor.

2 **DIRECT EXAMINATION**

3 Q. BY MS. WALKER: Mr. Stevenson, my name is Kim Walker,
4 and I'm attorney for the Union in the case. I just have a
5 couple of follow-up questions. How many employees were on
6 Mr. McNett's crew at UT?

7 A. Roughly 10 masons or so because there was -- they
8 brought more help there in the last couple of weeks, the last
9 week or so. But I'd say between 10 and 12 masons and about
10 the same amount of tenders, so about 20 to 24 people.

11 Q. How high were the exterior walls on the UT project?

12 A. How were they?

13 Q. How high were they?

14 A. They were probably 40-something feet high. They were,
15 they were about 40, about 40' high.

16 MS. WALKER: Thank you. That's all I have.

17 JUDGE ROSAS: Any follow-up, redirect -- or recross.

18 MS. LEONARD: Cross.

19 MR. HEARING: Jencks production, please.

20 MS. LEONARD: Mr. Stevenson never gave an affidavit to
21 the Board during the investigation, so there is no Jencks
22 production.

23 MR. HEARING: All right.

24 **CROSS-EXAMINATION**

25 Q. BY MR. HEARING: Were you asked to meet with a Board

1 agent to give a statement and just didn't complete one?

2 A. I was sent paperwork and I hadn't, I hadn't pursued
3 anything, so I threw it away.

4 Q. Do you know what the paperwork was that was sent to you,
5 sir?

6 A. It just said fill this out by a certain date. And I
7 mean like I said I didn't have anything to do with it.

8 Q. Didn't have anything to with what?

9 A. I wasn't pursuing anything. I thought it was somebody
10 asking me if I was interested in pursuing it basically.

11 Q. Pursuing some remedy for your discharge or what?

12 A. Yes. At the time, yes.

13 Q. Did this come from the National Labor Relations Board?

14 A. Yes.

15 Q. Do you remember what it was that you received?

16 A. It was basically a questionnaire.

17 Q. Did you fill it out before you threw it out, or did you
18 just throw it out?

19 A. I just disregarded it basically.

20 Q. When you say disregarded, did you toss it out?

21 A. Yes.

22 Q. Did you speak with anybody about it before you tossed it
23 out?

24 A. I had spoke with somebody prior from the Labor Board,
25 and they asked me my side of the story, and said, okay, thank

1 you.

2 Q. Do you remember what you said at that time that you told
3 somebody from the Board about your side of the story?

4 A. Basically exactly what I said today.

5 Q. So let's talk about that. The testimony that you gave
6 earlier about not being a member of the Bricklayers and not
7 ever being a member of the Bricklayers, did you ever speak
8 favorably about the Union at an AMS while you worked at an
9 AMS jobsite?

10 A. I didn't speak about it, period.

11 Q. That's the question. Did you ever wear any indicia,
12 anything on a shirt or have anything about you that would
13 indicate that you somehow supported the Bricklayers Union in
14 any way?

15 A. No, because he was supposed to give me a couple of
16 shirts, and every time he never had a 2X. I was going to
17 wear them, but I never got -- they were free shirts.

18 Q. You'd need the biggest one, huh.

19 A. Why tear up my clothes.

20 Q. So it's fair to assume then that you didn't wear a
21 Bricklayer Union shirt on premises at any AMS jobsite,
22 correct?

23 A. No, I didn't.

24 Q. Now, when you were at the yacht club, as I understand
25 your testimony, that's where you said that your foreman was

1 Turbo McNett; that's what he went by. Is that correct?

2 A. Yeah.

3 Q. Did you know that Mr. McNett was a member of the Union?

4 Do you know whether he was or not?

5 A. Excuse me?

6 Q. Do you know whether Mr. McNett was a member of the Union

7 or not?

8 A. No, I don't.

9 Q. Did he ever talk about the Union to you or being a
10 member of the Union?

11 A. Not before the meeting.

12 Q. Before what meeting?

13 A. The safety meeting.

14 Q. What you recall him saying at that safety meeting was I
15 can't say a whole lot about it, but probably not good for
16 wages is what he said?

17 A. Along those lines, yes.

18 Q. Do you remember anything different than what he said?

19 A. Anything different other than that you mean?

20 Q. Yes, sir.

21 A. No. It was basically he wasn't allowed to talk about
22 it.

23 Q. Did anybody ask him any questions about what he said?

24 A. There were people asking him questions, but he was
25 pretty adamant about, you know, other than that one thing he

1 said, he said I can't say a whole lot about it.

2 Q. So you don't recall him saying anything else other than
3 what you've told us here today?

4 A. No, because I kind of walked away.

5 Q. Because you weren't interested in joining the Union or
6 having a union?

7 A. I'm 54. What good is it going to do me to get into
8 something I'd pay in for 30 years? I'm not going to be
9 around for 30 more years. That was what I knew.

10 Q. All right. Was it clear to you, you weren't interested
11 in having the Union come to the AMS work force then, at that
12 point?

13 A. I was interested in the benefits. I wasn't -- the
14 information you get is so vague, they pretty much want you to
15 sit down with them and go over the whole thing. And like I
16 said, at the time I was like the only reason I wasn't
17 interested is because of my age.

18 Q. So you said that you worked at two jobs while you were
19 employed at AMS, the yacht club and then also the University
20 of Tampa job.

21 A. Um-hum.

22 Q. That's a yes? I have to do that for the record.

23 A. Oh, I'm sorry. Yes.

24 Q. It may not be clear whether it was yes or no. So to be
25 certain, then there weren't any other jobs you worked on

1 while you were employed as a mason at AMS?

2 A. Not that time, no.

3 Q. What other times have you worked for AMS?

4 A. I worked for them in I think it was 2006, I think at
5 Inverness. There was an elementary school, I think.

6 Q. So then it would have been almost 10 years or 10 years
7 later when you were hired again by them?

8 A. Right.

9 Q. Did you apply in the interim, in between 2006 and --

10 A. No.

11 Q. -- 2016?

12 A. No.

13 Q. All right. Your safety meeting on the morning of
14 May 16, 2016, who was that that conducted that meeting?

15 A. That morning?

16 Q. Yeah, the morning that you were fired.

17 A. It was Turbo.

18 Q. I'm sorry. It was Turbo?

19 A. Turbo, yeah.

20 Q. So is he the one that said for you to tie off at this
21 point?

22 A. He said, yeah, everybody needs to tie off from now on.

23 Q. Had Mario Morales talked to you about tying off prior to
24 that?

25 A. No.

1 Q. Had you asked Mr. Morales about whether you needed to
2 tie off or not prior to that?

3 A. No, because nobody was tied off.

4 Q. Are there certain situations that you understood that
5 you could be at a height above 6 feet and not have to be tied
6 off?

7 A. If you're, if you're -- the only time you don't need
8 fall protection is if you're railed off where there's less
9 chance of you falling out, yes.

10 Q. You testified earlier about being in a lift. Would that
11 be one of those machines that lifts up back and forth a cage
12 up to do work?

13 A. I didn't testify about being in a lift.

14 Q. Oh, I thought I heard you say you were on a lift at one
15 point.

16 A. No. We were on a mechanical scaffold.

17 Q. Explain what that is.

18 A. That's a scaffold that basically it's all one unit
19 that's pieced together, and it raises. They crank it up with
20 handles, and it raises one end. Then you go down and crank
21 it up as you go along. It raises it up like 2 feet at a
22 time. Instead of having to manually raise boards, you just
23 crank it.

24 Q. Did that scaffold have rails around you while you were
25 on it?

1 A. No, because the material boards are on the backside.
2 There's rails around the back where the mason tenders are at.
3 But on the mason's side, they raised the footboards where I
4 mean you'd have to be pretty small to fall down in that.

5 Q. That's what I was getting at. You had scaffold behind
6 you so -- or rails behind you so you couldn't fall backwards
7 off of it; is that right?

8 A. No, you can't like just tip and fall backwards, no, and
9 fall off.

10 Q. If you're actually flush with the wall or close enough
11 to the wall, you'd have to be an awful, awful thin person to
12 be able to fall between the space of what you're working on
13 and the wall itself; is that right?

14 A. For the most part, yeah. There was a couple of spots
15 where the boards meet in the corner where the scaffold wasn't
16 exactly perfectly aligned with the building.

17 Q. Okay. But did you understand either for your own
18 personal safety or because it was required as a mason either
19 by AMS or your other extensive experience that when you
20 didn't have a rail around you, behind you, that you needed to
21 be in a harness and tied off if you're over 6 feet?

22 A. On that particular scaffold?

23 Q. On any.

24 A. Oh, yeah.

25 Q. Because that's just a matter of safety. If you're not

1 tied off, you could fall off and be killed or seriously
2 injured, correct?

3 A. True.

4 Q. Because there's no rail behind you, right?

5 A. Well, there was never a time when there wasn't a rail
6 behind me on those scaffolds.

7 Q. So then let me move onto then this protection training
8 that you testified about that you said you vaguely recall at
9 the Westshore Yacht Club. Remember that testimony? It's
10 Exhibit 2 there in front of you. It looks like this on the
11 front.

12 A. What page?

13 Q. Let's start with the back and have you identify your
14 signature. I think it's on page 2 of 2 of General Counsel
15 Exhibit 2(c).

16 A. I see it.

17 Q. That is your signature, sir?

18 A. Yep.

19 Q. Who wrote in print "Walter Stevenson"?

20 A. Me.

21 Q. That date next to your signature, did you date that?

22 A. Looks like my writing.

23 Q. In this front part of this document, I want to make sure
24 we're clear for the record, were you provided a copy of this
25 actual document that day, say the first eight pages of it?

1 MR. HEARING: May I approach to show him? Thank you.

2 Q. BY MR. HEARING: Like, for instance, these pages here,
3 on page 2 of 8, were you provided copies of these things that
4 are attached that day?

5 A. Possibly.

6 Q. There is a reference to fall protection in here being on
7 page 8 of 8. I think it should be the last page of those
8 grid-like things.

9 MR. HEARING: May I approach again?

10 Q. BY MR. HEARING: Down here, you see that's where --

11 A. Yeah, I don't have my glasses.

12 Q. Right here. I'm referring to this working in heights,
13 on page 8 of 8, zero tolerance fall protection violations.
14 Do you see that?

15 A. Yes.

16 Q. Do you remember that being covered that morning in that
17 safety meeting?

18 A. I remember the term "zero tolerance," yes.

19 Q. That was by Mr. McNett that morning, right? That's what
20 your earlier testimony was.

21 A. At the yacht club?

22 Q. Yes, sir.

23 A. I think that was by Mario. I think that was by Mario
24 and Alek.

25 Q. All right, that's what I was confused about because I

1 thought I heard you say on direct that it was Mr. Morales and
2 Mr. Feliz, Alek. So when was the training by -- that was the
3 original training that you got on the Westshore Yacht Club,
4 right?

5 A. Yes.

6 Q. And then the training by Mr. McNett was actually on the
7 16th of May of 2016, the morning of; is that right?

8 A. There was no training.

9 Q. Well, some discussion about safety.

10 A. He said tie off, everybody tie off from now on.

11 Q. Did the nature of your scaffolding that you were working
12 on that day, had it changed at all?

13 A. It didn't change that day, no. We had been working on
14 that scaffold for almost 2 weeks, well, about a week and a
15 half, about a week and a half.

16 Q. That day did you have rails around you?

17 A. Did we have rails?

18 Q. Yes, sir.

19 A. We had rails behind us.

20 Q. Then were you working flush to the wall, to the column,
21 because I think you were working on a column that day.

22 A. No. We were -- actually, there was the columns on --
23 the scaffold was open on the end, so there was a 2 foot
24 return around to the glass on both sides where we just had to
25 reach over and lay a brick.

1 Q. So then you could have fallen there on the front part of
2 the scaffold then because that was open, correct?

3 A. On the sides.

4 Q. Yeah. And so it was good for you to be tied off under
5 that circumstance, correct?

6 A. If you're above 6 feet.

7 Q. If you what?

8 A. If you're above 6 feet.

9 Q. Yes, sir, of course, yeah. That's what I was assuming,
10 that you were working on a column above 6 feet by your
11 earlier testimony.

12 A. Well, the columns are about 12 feet, and I'm 6 feet
13 high, so the only reason we had to raise up even that much is
14 because most people are shorter than me. I can reach,
15 especially brick, you know, I didn't need to raise up. But
16 to answer your question, to raise up 12 inches, technically
17 we should have tied off.

18 Q. Right, all right. That morning do you recall before
19 Mr. McNett talked to you and sent you home, do you remember
20 being talked to about being tied off by Mr. Morales?

21 A. No.

22 Q. Do you remember whether you started that day with a
23 harness on at all?

24 A. No, nobody had harnesses on that morning or any day
25 prior to that.

1 Q. Do you remember whether Mr. Morales came up to you and
2 Mr. Acevedo and said that you guys aren't wearing harnesses,
3 you need to be wearing harnesses?

4 A. That was at the meeting -- oh, Mr. Morales?

5 Q. Yeah, Mr. Morales.

6 A. I might have heard something. It wasn't to me. I think
7 I heard a general we need to start tying off. And then at
8 the meeting, at the safety meeting, I think I don't know
9 maybe Morales said something to Turbo, and he said everybody
10 start tying off. I don't know how it went.

11 Q. Understood. I know it was a while ago. After that,
12 though, you went and started the work on the column, on the
13 scaffolding?

14 A. Um-hum.

15 Q. And it was raised?

16 A. Actually, we were already up there. We were topping
17 out.

18 Q. That's what I thought you said by your earlier
19 testimony, that you were getting near the top of the column;
20 is that right?

21 A. Right.

22 Q. So you would have to have had the scaffolding raised
23 that day, correct, to get to the top of the column?

24 A. Yes.

25 Q. And so do you remember starting off the work that

1 morning without the harness on and/or being tied off that
2 morning?

3 A. Yes.

4 Q. And then do you remember that you were then instructed
5 to get the harnesses on and tie off?

6 A. Yes.

7 Q. Then Mr. McNett showed up, and that's when he spoke to
8 you and Mr. Acevedo about not being properly tied off. Is
9 that when he spoke to you about the cinnamon bun?

10 A. Yes.

11 Q. And so he asked you to come down and get off the
12 scaffolding, and he spoke to you about not being tied off
13 properly?

14 A. No. He said you and you come here. He said sign this
15 and go home, just like that.

16 Q. All right, but you had to have asked why.

17 A. I did ask why. I said why. He said because you're not
18 tied off properly.

19 Q. Did he say the same thing to Mr. Acevedo? Were you
20 present for him telling --

21 A. Yeah, we were both standing there.

22 Q. Did Mr. Acevedo ask why he was being sent home, too?

23 A. Yes, he did.

24 Q. Did Mr. Acevedo make a comment that, well, he didn't
25 intend to fall?

1 A. I don't recall.

2 Q. Or whether he had any plan to fall?

3 A. Again, I walked away. When he said go home, I was like
4 got my stuff and left.

5 Q. You mentioned you became OSHA certified. When was that?

6 A. About a month and a half ago.

7 Q. As part of that OSHA certification, did you learn that
8 OSHA requires harnesses at certain heights and tie-offs as
9 well?

10 A. Yes.

11 Q. Do you recall whether that was at 10 feet or 6 feet for
12 OSHA requirements?

13 A. It's above 6 feet.

14 Q. Did you have a conversation after you were terminated
15 with Alek Feliz about why you were terminated?

16 A. Yes, I did.

17 Q. Could you tell us about that?

18 A. I called Alek. I said why am I fired? He said because
19 you weren't tied off properly. I said nobody's been tied off
20 for the whole time I've been on that job. He said that's
21 beside the point. He said you were told to tie off, and you
22 didn't tie off properly.

23 Q. Did you observe Mr. Acevedo up next to you tied off
24 after you were told to tie off as well?

25 A. Yeah.

1 Q. Could you see how he tied off?

2 A. Yes.

3 Q. Did he tie off with the cinnamon bun, or did he tie off
4 the same way as you?

5 A. Same way as me.

6 Q. Was that meeting with Mr. McNett that morning when you
7 were told to tie off, did he call that a toolbox talk?

8 A. Yes, that's the terminology.

9 Q. You probably thought that was a dumb name for it, but
10 that's how he used it?

11 A. They put it on the safety sheet sometimes, a toolbox
12 meeting, toolbox talk.

13 Q. Do you remember going to your vehicle that morning to
14 get your harness at some point?

15 A. I went to get my harness, yes.

16 Q. Had you been up on the scaffolding without the harness
17 prior to you going to get the harness?

18 A. After 2 weeks.

19 Q. I meant that day.

20 A. Yeah.

21 Q. That morning you had that?

22 A. Yeah.

23 Q. But that was after Mr. McNett told you to tie off?

24 A. Yes.

25 Q. To tie off, you have to have a harness on, correct?

1 A. Yeah, I would guess.

2 Q. Then why did you -- I understand. Why did you go and
3 get the harness? Was it because somebody after the toolbox
4 talk, when you went on the scaffolding without the harness,
5 somebody said, hey, I assume they called you by your first
6 name, you need to have your harness. Did somebody do that,
7 or what made you go to your vehicle and get it?

8 A. Because the meeting was a break time. So after he said
9 everybody needs to tie off from now on, I said I've got to go
10 to my truck and get my harness then. He said, fine, go get
11 your harness.

12 Q. Do you know if Mr. Acevedo went to get his harness at
13 the same time?

14 A. I don't recall. I had my harness in the gang box for
15 2 weeks. I finally, because I'm responsible for it, if
16 somebody steals it and it's just laying around, so --

17 Q. You'd have to replace it, right?

18 A. I took it back to my truck because I wasn't using it.
19 Nobody was using theirs.

20 Q. And so that morning, though, do you recall whether
21 Mr. Acevedo had his safety harness on prior to the toolbox
22 talk?

23 A. Did he have it on prior to that?

24 Q. Prior.

25 A. No.

1 Q. After the talk, did he put it on?

2 A. Yes.

3 Q. Do you know if he went to his vehicle to get it or where
4 he went?

5 A. I think he had his. I don't recall, but I think, I
6 think he had it. I don't recall, honestly.

7 Q. Fair enough. On the Westshore training, the Westshore
8 Yacht Club training, you said that you believed that Alek
9 Feliz was there for the training. Could that have been
10 Fernando Ramirez? Do you remember who that is?

11 A. No, Alek was there.

12 Q. Do you know who Fernando Ramirez is?

13 A. Fernando? Yes, I do remember Fernando.

14 Q. Is he an assistant to --

15 A. I think -- yeah, I was thinking it was Mario there, but
16 it was probably Fernando. Yeah, I remember Fernando now.

17 Q. So Fernando was at the Westshore Yacht Club training
18 then?

19 A. I don't remember. I know it was either Mario or
20 Fernando. Honestly, that was a year ago so --

21 Q. I understand.

22 MR. HEARING: That's all I have.

23 JUDGE ROSAS: Any redirect?

24 **REDIRECT EXAMINATION**

25 Q. BY MS. LEONARD: I have one clarifying question for you,

1 Mr. Stevenson. When you say you went to get your harness
2 from the truck, was this a harness that you owned or a
3 harness that had been issued to you by AMS?

4 A. It was issued.

5 Q. And just to clarify, on the jobsite, I believe
6 Respondent's counsel asked you if someone called you by name.
7 What name did you go by on the jobsite?

8 A. Wally.

9 MS. LEONARD: Nothing further, Your Honor.

10 MS. WALKER: Nothing from Petitioner.

11 JUDGE ROSAS: Thank you, sir. You're excused. Please
12 do not discuss your testimony with anyone until counsel
13 advises you otherwise that the case is closed. All right?
14 Thanks. Have a good day.

15 **(Witness excused.)**

16 JUDGE ROSAS: We'll take a 5-minute break.

17 **(Off the record from 3:31 p.m. to 3:41 p.m.)**

18 MS. LEONARD: Your Honor, at this time, Counsel for the
19 General Counsel would like to make a motion to amend the
20 complaint. The amendment is to paragraph 6 of the complaint
21 to read as follows: "On or about a date in early May 2016, a
22 more precise date being presently unknown to the undersigned,
23 Respondent by Aleksei Feliz and Brent McNett, at Respondent's
24 UT jobsite, threatened employees with reduced wages if they
25 voted for the Union."

1 JUDGE ROSAS: Any objection?

2 MR. HEARING: I need to see what the original complaint
3 says.

4 JUDGE ROSAS: This was already amended once, paragraph
5 6, right?

6 MS. LEONARD: To change the location from the yacht club
7 to the University of Tampa.

8 JUDGE ROSAS: Tampa is WYC jobsite?

9 MS. LEONARD: That's the yacht club. And then UT is the
10 University of Tampa.

11 MR. THOMAS: Counsel, would you run that proposed
12 amendment by us one more time? I've got the --

13 MS. LEONARD: Very simply it is just adding "and Brent
14 McNett" after Aleksei Feliz in paragraph 6.

15 MR. HEARING: I guess our objection is it's vague as to
16 are they contending these two were together at the same time
17 when the threat was made, or are they contending that it's
18 two separate times and they were individually there? We've
19 had testimony, for instance, about Mr. Feliz being at a
20 meeting where he translated after Mr. Karp spoke and he met
21 with eight employees. My presumption was from the allegation
22 here and from the testimony that there was no -- Mr. McNett
23 was not present for that. Then we've had separate testimony
24 now that there was another time where Mr. McNett was alleged
25 to have said something about wages. But the contention to

1 amend, is that to contend that they're at the same meeting
2 together?

3 MS. LEONARD: No, it wasn't. That was for simplicity.
4 If we want, we can do a paragraph 6(a) and 6(b).

5 JUDGE ROSAS: I think that makes sense. What I'm going
6 to ask you to do -- is that the last amendment that you're
7 going to offer at this point?

8 MS. LEONARD: I assume so.

9 JUDGE ROSAS: What I'm going to ask you to do so that
10 the record is clear much later on and there's no confusion,
11 there tend to be a lot of pleadings in these papers, is to
12 generate before we close a redlined complaint showing the
13 amendment.

14 MS. LEONARD: Okay.

15 JUDGE ROSAS: And we're going to designate that as an
16 additional -- that would become the whatever amended
17 complaint.

18 MS. LEONARD: Okay. Redline for --

19 JUDGE ROSAS: You've just done amendments. You haven't
20 actually designated an amended complaint.

21 MS. LEONARD: No, it was just amendment to the
22 complaint.

23 JUDGE ROSAS: Okay. So in I guess a couple of days, we
24 have a third amended complaint or second amended complaint.

25 MS. LEONARD: Did you mean before we close today or

1 before the hearing closes?

2 JUDGE ROSAS: No, no, before we close the record.

3 Before we close the record, what you'll do is generate an
4 amended complaint that'll show the redlined versions, and
5 that will be the one that we'll deal with and we'll have in
6 the record because this way nobody misses anything later on.
7 Okay?

8 MS. LEONARD: Correct.

9 MR. HEARING: Could I ask for clarification on that? Is
10 that before or at or around the time that the Counsel for the
11 General Counsel rests their case or closes their case, or are
12 you saying after we even produce our response?

13 JUDGE ROSAS: It doesn't much matter. It's for the
14 record later on so nobody gets confused. Do you have a
15 suggestion --

16 MR. HEARING: Just in terms of notice, I was going to
17 say --

18 JUDGE ROSAS: Okay, fine.

19 MR. HEARING: -- after the presentation of their case,
20 that they be given an opportunity to redline and we then know
21 fully what's been alleged.

22 JUDGE ROSAS: That's fine. Do it at the conclusion of
23 your case. Try to get it to them the next day. And then if
24 it changes again, we can change it again. But with the last
25 document, because just for that reason, I'm looking at the

1 complaint, and it doesn't incorporate the amendment, and
2 we've got to piece some pieces together moving on. Don't
3 want it sloppy later on. To kind of simplify things, I think
4 it makes a lot of sense.

5 Okay. Next witness?

6 MS. LEONARD: All right, Counsel for the General Counsel
7 now calls Mr. Mike Bontempo.

8 JUDGE ROSAS: Sir, please raise your right hand.
9 (Whereupon,

10 **MICHAEL BONTEMPO**

11 was called as a witness by and on behalf of the General
12 Counsel and, after having been duly sworn, was examined and
13 testified as follows:)

14 JUDGE ROSAS: Please have a seat. State and spell your
15 name, and provide us with an address.

16 THE WITNESS: Michael Bontempo, M-i-c-h-a-e-l
17 B-o-n-t-e-m-p-o, 1140 East Willow Run Drive, Port Orange,
18 Florida 32129.

19 **DIRECT EXAMINATION**

20 Q. BY MS. LEONARD: Thank you. Mr. Bontempo, who is your
21 employer?

22 A. I'm currently employed by BAC Local 8 Southeast.

23 Q. That's the Bricklayers Union?

24 A. That is the Bricklayers Union.

25 Q. The AC in Bricklayer, the AC stands for Allied Crafts,

1 correct?

2 A. That is correct.

3 Q. Could you name some of the Allied Crafts that tradesmen
4 in the Union perform?

5 A. Sure. We cover basically all the trowel trades, which
6 are tile, terrazzo, plaster, stone, brick, block, concrete.
7 We also cover fiberglass mechanics. If I'm forgetting
8 someone, I apologize.

9 Q. What is your profession?

10 A. I was a bricklayer, cement mason.

11 Q. How long were you a cement layer brick mason?

12 A. 33 years.

13 Q. What position do you hold with the Union?

14 A. I'm a field representative for Florida.

15 Q. How long have you been the field representative?

16 A. 3½ years.

17 Q. What are your primary responsibilities as field
18 representative?

19 A. Manning jobsites for the contractors. We also negotiate
20 contracts.

21 Q. Does the Union process grievances with the Respondent,
22 AMS?

23 A. Yes, we do.

24 Q. Approximately how many grievances are filed on behalf of
25 employees who are not members of the Union?

1 MR. HEARING: Object to relevance. I think that if this
2 is being asked about AMS, I thought the 8(a)(5) allegation
3 was dropped.

4 MS. LEONARD: It was.

5 MR. HEARING: Is this just background?

6 MS. LEONARD: Yes.

7 MR. HEARING: Otherwise it's not relevant whether --

8 MS. LEONARD: I can withdraw it. It's not that
9 important. Okay.

10 Q. BY MS. LEONARD: Mr. Bontempo, prior to becoming a field
11 representative employed by the Union, were you a member of
12 the Union?

13 A. Yes, I was.

14 Q. How long have you been a member of the Union?

15 A. I've been a member of the Union for 29 years.

16 Q. Prior to becoming a field representative for the Union,
17 who was your employer?

18 A. I was employed by AMS, Advanced Masonry Systems.

19 Q. When was the first time you went to work for AMS?

20 A. I first worked for AMS in the year 2000, I think.

21 Q. When was the most recent time, from when to when?

22 A. The most recent time was from 2011 ballpark to 2013.

23 Q. What was your job title then in 2011-2013?

24 A. Foreman/superintendent.

25 Q. Approximately how many jobsites were you the foreman or

1 superintendent of?

2 A. I would say approximately four.

3 Q. What were your job duties -- did your -- withdrawn.

4 Did your job duties vary between jobsites?

5 A. Not between jobsites per se.

6 Q. Then what were your job duties while you were a

7 superintendent for foreman?

8 A. Actually, we had full reign of the entire project,

9 including making sure we were on budget, on schedule, manning

10 the jobs, ordering the materials, ordering where we worked

11 that day, the direction of the job, attending subcontractor

12 meetings, payroll, filling out time sheets, and obviously

13 keeping an eye on safety throughout the project.

14 Q. If you could please -- I forgot to give you a copy.

15 MS. LEONARD: Your Honor, if I may approach the witness,

16 please?

17 **(General Counsel's Exhibit 14 marked for identification.)**

18 Q. BY MS. LEONARD: If you could please examine the

19 document that has been marked for identification as General

20 Counsel's Exhibit 14?

21 A. Yes, ma'am.

22 Q. Take a moment to check the entire document, and then

23 tell me what this document is.

24 A. This is the industrial agreement between Local 1,

25 Florida.

1 MS. LEONARD: I'm sorry, could we go off the record for
2 a second?

3 **(Off the record from 3:51 p.m. to 4:02 p.m.)**

4 Q. BY MS. LEONARD: Do you have a copy of what's marked for
5 identification as General Counsel's Exhibit Number 14?

6 A. Yes, ma'am, I do.

7 Q. What is it?

8 A. This is the industrial agreement that was in place
9 between Bricklayers Local 1 of Florida and Advanced Masonry
10 Systems, along with it looks like a wage sheet and an MOU on
11 the back of it.

12 Q. What are the terms of the MOU?

13 A. This particular one as far as wages?

14 Q. No, I'm sorry. How does it incorporate, if it does, the
15 industrial agreement?

16 A. In paragraph 1, it says the attached industrial
17 agreement between the Bricklayers and Allied Craftworkers,
18 Local 1, Florida, and the contractors, subcontractors
19 association, effective May 1, 2014 [sic] through April 30,
20 2005, defines industrial work as any job facilitating the
21 manufacturing, producing, process of product, retail food
22 established at grocery stores, restaurants, food processing,
23 all work performed for utility companies, race tracks, dog
24 tracks, and agree that this type of -- it is agreed that all
25 types of construction work not included in the definition of

1 the industrial work shall be considered commercial work.

2 Q. But by that paragraph, the entire industrial agreement
3 was incorporated into the MOU between --

4 MR. HEARING: Objection, leading.

5 JUDGE ROSAS: Let her finish the question.

6 MR. HEARING: I'm sorry.

7 JUDGE ROSAS: Go ahead. So by what?

8 MS. LEONARD: I believe this was just following up to
9 clarify.

10 JUDGE ROSAS: Well, finish the question. I don't know
11 what the question is.

12 MS. LEONARD: By the terms of what you just read, the
13 industrial agreement is incorporated into the MOU between
14 Bricklayers Local 1 and AMS, correct?

15 JUDGE ROSAS: Overruled.

16 THE WITNESS: Absolutely.

17 Q. BY MS. LEONARD: Okay, great. And directing your
18 attention to page 16 of the CBA, that's 19 of 22 of the top
19 header.

20 A. Yes, ma'am.

21 Q. Article 37, if you could summarize in your expertise as
22 the administrator of this contract, as the field
23 representative, what is the duration of this agreement?

24 A. The duration of the agreement is from May 1, 2004,
25 through April 30, 2005. It automatically generates every

1 year unless a written notice is negotiated, with a written
2 notice of decision to negotiate a new agreement in whole or
3 in part and given written, by either party, not to other,
4 later than 60 days, more than 90 days prior to the
5 expiration --

6 MR. HEARING: Objection. He's reading from the
7 document. He was asked for his understanding.

8 JUDGE ROSAS: Well, the document speaks for itself.
9 Counsel, I understand you're laying some framework here.

10 THE WITNESS: I could have put it in my own words.

11 JUDGE ROSAS: I'll actually allow you to lead if you
12 want to establish some facts with respect to the document, if
13 you put it into evidence for --

14 MS. LEONARD: I will lead.

15 JUDGE ROSAS: -- in terms of just establishing a
16 framework. So go ahead.

17 Q. BY MS. LEONARD: Mr. Bontempo, is this the contract that
18 you administered as the field representative with AMS?

19 A. Yes, ma'am.

20 MS. LEONARD: I move for the admission of General
21 Counsel's Exhibit Number 14.

22 MR. HEARING: Just to be consistent, I object on the
23 grounds of relevance and materiality given that there is no
24 8(a)(5) allegation.

25 JUDGE ROSAS: This is a -- pardon my ignorance, but this

1 is a document that's dated 2004 to 2005, and it's your
2 assertion that it's the extent that it continues renewing
3 between --

4 MS. LEONARD: Right.

5 JUDGE ROSAS: -- members of the association, it's a
6 trade agreement, an MOU between the Local 1 and all the
7 participant members of the Contractors Association?

8 MS. LEONARD: Yes.

9 JUDGE ROSAS: Which would include AMS?

10 MS. LEONARD: Whether or not they were part of the
11 industrial association is beyond -- beside the point since,
12 as Mr. Bontempo testified, they had signed an MOU
13 incorporating the terms of that agreement into their own
14 contract.

15 JUDGE ROSAS: So the relevance in this case is what?

16 MS. WALKER: Your Honor, Petitioner would find this to
17 be a relevant exhibit because there's some issues about the
18 Excelsior list and eligibility for employees and in
19 calculating and determining whether certain individuals
20 should have been included on the Excelsior list by the
21 Employer. There are some shift times and hours in this
22 document that would have governed during that Steiny/Daniel
23 period when this contract would have been in effect.

24 MS. LEONARD: I would also argue that it's relevant as
25 background for why the Union ended up filing a petition to

1 represent the employees as a 9(a) representative.

2 JUDGE ROSAS: Give me some more on that.

3 MS. LEONARD: The background?

4 JUDGE ROSAS: Yeah.

5 MS. LEONARD: Of the longstanding relationship the
6 parties had.

7 JUDGE ROSAS: Right.

8 MS. LEONARD: And the --

9 JUDGE ROSAS: I mean all of a sudden, did this change
10 over from 8(f) to a 9(a)?

11 MS. LEONARD: Part of the background of it.

12 JUDGE ROSAS: Part of the background.

13 MS. WALKER: Your Honor, the existence of this -- the
14 existing of this 8(f) relationship also established the
15 showing of interest for the petition.

16 JUDGE ROSAS: So you're arguing relevance here?

17 MS. WALKER: Yes, sir.

18 JUDGE ROSAS: Oh, I thought you said irrelevant.

19 MS. WALKER: No, it is relevant. Petitioner argues it
20 is very relevant.

21 JUDGE ROSAS: Okay. I'm going to err on the side of
22 including the counsel and we'll make that determination
23 ultimately. Let's have it in the record. Overruled.

24 **(General Counsel's Exhibit 14 received in evidence.)**

25 Q. BY MS. LEONARD: Mr. Bontempo, pursuant to the

1 contract's duration clause in Article 37, did this contract
2 roll over from year to year after 2004?

3 A. Yes, ma'am, it did.

4 Q. It's my understanding that the Union and the Employer
5 have a dispute that isn't directly related to this proceeding
6 about the actual termination date of the contract; is that
7 correct?

8 A. That is correct.

9 Q. Could you explain that dispute briefly?

10 A. Yes. We feel that the contract still exists and that
11 the written termination to withdraw was not given in a timely
12 manner, so in our view the contract is still in existence.

13 Q. Okay, great. Now, if I could direct your attention
14 to --

15 MR. HEARING: Could I just have a clarification so I
16 understand the presentation of the evidence? I think it's
17 been confirmed, and I'm not certain but we're here on an
18 8(a)(1) and 8(a)(3) only. There is not an 8(a)(5) allegation
19 in this complaint; is that correct?

20 MS. LEONARD: That is accurate.

21 MR. HEARING: All right, I just wanted to make sure I've
22 got that right.

23 MS. LEONARD: Your Honor, if I may approach?

24 Q. BY MS. LEONARD: Mr. Bontempo, I'm going to direct your
25 attention now to Regional Director's Exhibit 1(a). It's the

1 petition. This has already been admitted into evidence,
2 Mr. Bontempo. Why did the Union file this petition on April
3 29, 2016?

4 A. To show that we represented the majority of the Company.

5 Q. Prior to filing the petition, was anyone responsible for
6 collecting a showing of interest?

7 A. Yes, I was.

8 Q. How did you obtain the signatures required for showing
9 of interest?

10 A. By visiting jobsites.

11 Q. That's the Employer's jobsites?

12 A. Yes, that's correct.

13 Q. Which jobsites did you go to?

14 A. All the jobsites. At one time or another, I visit all
15 the jobsites.

16 Q. At that time, which jobsites were those?

17 A. Oh, at that time there was Bethune-Cookman College, the
18 Westshore Yacht Club, University of Tampa. There was one in
19 downtown St. Pete. I know the address is One South First
20 Street. I do not know the name of that project.

21 Q. How often would you go to each of the jobsites?

22 A. At least biweekly.

23 Q. How long would you stay each visit?

24 A. It all depends, the size of the job and the amount of
25 members or employees or folks that were on those jobsites.

1 It could be as short as 15 minutes. It could be as long as
2 an hour.

3 Q. If I could direct your attention now to the General
4 Counsel's Exhibit Number 11, a two-page document, yeah, both
5 those pages.

6 A. Okay.

7 Q. What is this document?

8 A. These documents are part of our application when we sign
9 up new members. The first one is an authorization for
10 representation. We get this signed to designate that the
11 members or the new signees give us authorization to represent
12 them.

13 Q. And what's the second page?

14 A. The second one is working dues authorization. This is
15 also part of the application process where the new members
16 that are signing up understanding that there would be working
17 dues assessed to their weekly checks.

18 Q. When you would make jobsite visits, did you have those
19 papers with you?

20 A. Oh, absolutely.

21 Q. What did you do with them?

22 A. If they were new hires, we would have them sign up, sign
23 them.

24 Q. What would you do with them after they were signed up?

25 A. They would then be sent to our local office, which in

1 return was then sent to our international office in
2 Washington, D.C.

3 Q. Were copies sent to AMS?

4 A. Some of these forms were the working dues authorization
5 also would be accompanied by a referral. So, yes, the
6 referrals would then be faxed into the Company and/or scanned
7 or e-mailed to notify them that there was -- we had
8 authorization for the working dues to be taken from the
9 checks.

10 MS. LEONARD: Now, I have a tangible piece of evidence,
11 Your Honor. There are pictures of it with everyone else's
12 exhibits, but it is a T-shirt that has been marked for
13 identification as General Counsel's Exhibit 12.

14 **(General Counsel's Exhibit 12 marked for identification.)**

15 Q. BY MS. LEONARD: Mr. Bontempo, do you recognize this
16 T-shirt?

17 A. Yes, I do.

18 Q. What is this T-shirt?

19 A. That is a T-shirt that the Local had made up to
20 distribute to our members.

21 Q. Did you take these to the jobsites with you too?

22 A. I absolutely did.

23 Q. Did you pass them out to employees?

24 A. Yes, I did.

25 Q. How many employees took them?

1 A. As many as I had or as many that were there.

2 Q. Is there any particular reason why this shirt is neon
3 yellow?

4 A. Neon yellow or neon orange are the reflective colors
5 that are required on jobsites for the most part today.

6 Q. Thank you very much. Now, if I could, that stack of
7 papers you have there, direct your attention to --

8 MS. LEONARD: Oh, Your Honor, I move to admit both
9 General Counsel's Exhibits 11 and 12, the T-shirt and the
10 authorization form.

11 **(General Counsel's Exhibit 11 marked for identification.)**

12 JUDGE ROSAS: Voir dire?

13 MR. HEARING: No. No objection.

14 JUDGE ROSAS: 12 and 13 -- 11 and 12 are received.

15 **(General Counsel's Exhibits 11 and 12 received in evidence.)**

16 Q. BY MS. LEONARD: Now, in the stack, General Counsel's
17 Exhibit 7, we're going to look first at 7(c).

18 A. Yes, ma'am.

19 Q. Mr. Bontempo, do you recognize the phrase "right to
20 work" on that page?

21 A. Yes, I do.

22 Q. As a union representative, are you familiar with the
23 state of Florida's so-called right to work law?

24 A. Yes, ma'am, I am.

25 Q. Could you briefly explain what your understanding of

1 that law is with regard to private sector employees?

2 A. My understanding of the right to work law is that a
3 union cannot force someone to join the union, nor could an
4 employer discourage them from doing so also.

5 Q. What does the -- does the law have anything to say about
6 dues?

7 MR. HEARING: Objection, lack of predicate, establish
8 that this witness can testify about what the law provides.

9 JUDGE ROSAS: This is exhibit?

10 MS. LEONARD: This is exhibit 7(a) -- or 7(c).

11 MS. WALKER: 7(c).

12 JUDGE ROSAS: And you're asking about which number?

13 MS. LEONARD: 7(c), just the heading on it that says
14 Florida is right to work state. I'm just asking him about
15 his layman's knowledge as the union representative with
16 respect to right to work.

17 JUDGE ROSAS: Overruled -- I mean sustained. Sustained.
18 The fact finder is sufficiently familiar with the
19 nomenclature.

20 MS. LEONARD: Thank you very much.

21 Q. BY MS. LEONARD: So still looking at 7(c) though,
22 Mr. Bontempo, is there any scenario where according to bullet
23 point 1 the Union could bargain a contract that could force
24 each of the Company's employees to pay hundreds of dollars
25 per year out of their paychecks in union dues, fees, fines,

1 or assessments?

2 A. That is not correct.

3 Q. Now, directing your attention to General Counsel's
4 Exhibit 7(j) and 7(k), a little further down the stack.

5 A. Yes, ma'am.

6 Q. Do you see where it says that AMS paid \$2.85 per
7 employee per hour to the Union?

8 A. Yes, I do.

9 Q. It says that in English on the first one and in Spanish
10 on the second.

11 A. That is correct.

12 Q. Is it true that AMS paid \$2.85 per hour per employee to
13 the Union?

14 A. Yes.

15 Q. Was that payment withheld from employees' paychecks?

16 A. It was not.

17 Q. What was that payment for?

18 A. That payment there, the 2.85 was broken down that \$1.76
19 went for health insurance, full family care, and 99 cents
20 into -- broken into two pensions, so it was a local pension
21 and an international pension. One was receiving 50 cents and
22 one was receiving 49 cents.

23 Q. To clarify, if that money didn't come from employees'
24 paychecks, where did it come from?

25 A. That's a fringe contribution that's made on behalf of

1 the Employer.

2 Q. Mr. Bontempo, do you know how union salaries are funded?

3 A. Yes, ma'am, from working dues check-offs.

4 Q. In the state of Florida, which employees of Respondent
5 would be contributing to union salaries?

6 A. Union members.

7 Q. And not non-members.

8 A. That's correct.

9 MS. LEONARD: I have no further questions for
10 Mr. Bontempo.

11 JUDGE ROSAS: Charging Party?

12 MS. WALKER: Yes, Your Honor. I have a stack of
13 exhibits to give to everyone to use during his testimony.

14 JUDGE ROSAS: How long is your questioning?

15 MS. WALKER: Your Honor, I think it would take at least
16 40, 45 minutes.

17 JUDGE ROSAS: We're going to conclude at this point
18 because I want to deal with the document production.

19 Sir, we'll continue with testimony at 9:00 a.m.
20 tomorrow.

21 THE WITNESS: Okay, thank you, Your Honor.

22 **(Whereupon, at 4:16 p.m., the hearing in the above-entitled**
23 **matter was continued, to resume the next day, Tuesday,**
24 **February 7, 2017, at 9:00 a.m.)**

25

CERTIFICATION

1
2 This is to certify that the attached proceedings before
3 the National Labor Relations Board (NLRB), Region 12, in the
4 matter of **ADVANCED MASONRY ASSOCIATES, LLC, d/b/a ADVANCED**
5 **MASONRY SYSTEMS**, Case No. 12-RC-175179 and 12-CA-176715, at
6 Tampa, Florida, on February 6, 2017, was held according to
7 the record, and that this is the original, complete, and true
8 and accurate transcript that has been compared to the
9 recording, at the hearing, that the exhibits are complete and
10 no exhibits received in evidence or in the rejected exhibit
11 files are missing.

12
13
14
15 
16 _____

17 Ann Connell

18 Official Reporter
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22
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24
25

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

In the Matter of:

ADVANCED MASONRY ASSOCIATES, LLC,
d/b/a ADVANCED MASONRY SYSTEMS,

Employer/Respondent,
and

BRICKLAYERS AND ALLIED
CRAFTWORKERS, LOCAL 8 SOUTHEAST,

Petitioner/Charging Party.

Case No. **12-RC-175179**
12-CA-176715

The continuation of the above-entitled matter came on for hearing pursuant to notice, before **MICHAEL A. ROSAS**, Administrative Law Judge, at the **National Labor Relations Board, 201 East Kennedy Boulevard, Suite 530, Tampa, Florida**, on **Tuesday, February 7, 2017, at 9:00 a.m.**

A P P E A R A N C E S

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1		<u>I N D E X</u>				
2						VOIR
3	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
4						
5	Michael Bontempo	188	233	365	381	221
6				374	390	250
7				389		340
8						
9	Luis A. Acevedo	391	--	--	--	--
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1	<u>E X H I B I T S</u>		
2	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	GENERAL COUNSEL'S		
4	GC-13	397	399
5			
6	CHARGING PARTY'S		
7	CP-2	194	194
8	CP-3	195	196
9	CP-4	196	196
10	CP-5	197	197
11	CP-6	197	198
12	CP-7	204	205
13	CP-8	205	207
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20	CP-22 and CP-23	200	201
21	CP-24(a) through 24(h)	203	204
22	CP-25(a) and 25(b)	231	232
23	CP-26	374	--
24			
25			

1		<u>E X H I B I T S</u>	
2	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	RESPONDENT'S		
4	R-13	340	341
5	R-39	249	252
6	R-40	234	236
7	R-41	352	353
8	R-42	355	361 - Rejected
9	R-56	345	347
10	R-57	253	Not Offered
11	R-58	335	336
12			
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1 P R O C E E D I N G S

2 (Time Noted: 9:33 a.m.)

3 JUDGE ROSAS: The continuation now with cross-
4 examination by the Charging Party.

5 (Whereupon,

6 **MICHAEL BONTEMPO**

7 was recalled as a witness by and on behalf of the General
8 Counsel and, having been previously sworn, was examined and
9 testified as follows:)

10 **DIRECT EXAMINATION**

11 Q. BY MS. WALKER: Mr. Bontempo, when you were a
12 superintendent at AMS, did you get permission or approval
13 from any managerial or upper management before you hired,
14 fired, or laid off an employee?

15 A. No. We were able to perform the tasks ourselves.

16 Q. Would you perhaps discuss it with upper management?

17 A. Absolutely would. We did have a road foreman, Mr. Marc
18 Carney, that we would discuss whether, you know, the need to
19 increase or decrease manpower. But ultimately, it was the
20 decision of the superintendent on site to do what, you know,
21 was needed to be -- to done, according.

22 Q. Are you familiar with the term, "putting an employee on
23 the couch"?

24 A. Yes, I am.

25 Q. And what does that mean?

1 A. That's an AMS term that is used for when you
2 temporarily, maybe you're in the middle of going from one job
3 to another or waiting for another job to start, that you
4 would put this employee just at home for a couple of days
5 until he was recalled back to work.

6 Q. And is that an AMS term, or is that an industry term?

7 A. I learned it at AMS, to be honest. I've never heard it
8 before.

9 Q. And is putting employees on the couch a regular part of
10 doing business at AMS?

11 A. Yes, it is.

12 Q. And what is the reason for that?

13 A. Well, there's different times or different reasons.
14 Sometimes you're caught up to another subcontractor on a job,
15 or you're waiting for another job to start and, you know,
16 instead of losing those employees, you know, they're
17 basically on a hold pattern, for lack of better words.

18 Q. And is that employment practice of needing employees at
19 time and needing them to lay them off at time, is that
20 standard in the construction industry?

21 A. Yes, it is.

22 Q. Are you familiar with Luis Acevedo as an employee of
23 AMS?

24 A. Yes, I am.

25 Q. And who is he?

1 A. Luis Acevedo is one of our bricklayer members.

2 Q. And he is, is he a member of the Union?

3 A. Yes, ma'am. He is.

4 Q. Did he work at AMS?

5 A. Yes, he did.

6 Q. All right. I'd like to refer you to the stack of the
7 General Counsel's exhibits. That's going to be the middle --
8 I'm sorry --

9 JUDGE ROSAS: Oh, General Counsel's --

10 Q. BY MS. WALKER: General Counsel's exhibits are in the
11 middle there.

12 A. Yes, ma'am.

13 Q. And you're going to be looking at GC-9.

14 A. Yes, ma'am.

15 Q. Okay. When is the last time Mr. Acevedo worked at AMS?

16 A. In May, May 16th, 2016.

17 Q. And do you know how his employment ended?

18 A. To the best of my knowledge, it ended for a safety
19 violation.

20 JUDGE ROSAS: Now, you want him to read from the
21 document or --

22 MS. WALKER: No. He -- I wanted him to testify.

23 Q. BY MS. WALKER: Just if you would just testify from your
24 own memory without looking at the document.

25 A. Okay. He was dismissed for a safety violation,

1 terminated.

2 Q. Do you know what safety violation AMS claimed was
3 violated?

4 MR. HEARING: Objection. Lack of predicate
5 understanding.

6 JUDGE ROSAS: I think there's sufficient foundation and
7 corroboration in the record based on this witness's likely
8 involvement, so I'll take it on faith that there will be
9 sufficient foundation. If not, we can strike his testimony.
10 Go ahead.

11 THE WITNESS: It was for improper use of a safety
12 harness, related to fall protection.

13 Q. BY MS. WALKER: And how are you familiar with that claim
14 violation by AMS?

15 A. I received a phone call from Mr. Acevedo.

16 JUDGE ROSAS: Mr. Acevedo will be testifying?

17 MS. WALKER: Yes, Your Honor.

18 Q. BY MS. WALKER: In your position as a superintendent of
19 AMS, did you monitor safety conditions and violations on the
20 work site?

21 A. Yes, ma'am.

22 Q. And specifically, what did you do in that regard?

23 A. Well, we ensured that our, you know, the employees were
24 working in a safe manner.

25 Q. Were there occasions when you would find an employee not

1 following a safety rule, like using a harness or using it in
2 the correct manner?

3 A. Yes, ma'am.

4 Q. And did you or any other supervisor at AMS fire that
5 employee for that violation?

6 A. No, ma'am.

7 Q. What would be the typical response if you found a safety
8 violation on the jobsite when you were a superintendent?

9 A. Definitely, a first-time incident would just be a verbal
10 warning and, you know, showing the employee how to correctly
11 do what was being done incorrectly.

12 Q. As a union field representative, are you aware of any
13 employees fired at AMS for safety violations other than Luis
14 Acevedo and Walter Stevenson?

15 A. I am not.

16 Q. As a field representative for BAC Local 8 Southeast,
17 covering the state of Florida, were you the primary person
18 working the campaign at AMS?

19 A. Yes, I was.

20 Q. And in this capacity, were you involved in discussions
21 resulting in the stipulated election agreement between the
22 parties?

23 A. Yes, I was.

24 Q. Okay. I want to show you, in the stack that's marked
25 for Charging Party, if you want to flip that over now. And I

1 would like to refer you to what's been marked -- actually,
2 no. We're not going to go there yet. I'm sorry about that.
3 Go -- are the Regional Director's exhibits in there?

4 JUDGE ROSAS: What do you need?

5 MS. WALKER: RD-1(c).

6 JUDGE ROSAS: Look in here, sir. See the index?

7 THE WITNESS: Yes, Your Honor.

8 Q. BY MS. WALKER: Okay. Mr. Bontempo, I'd like to have
9 you look at what's been admitted into evidence as RD-1(c).

10 A. Yes, ma'am.

11 Q. Okay. And without reading from that document, were you
12 involved in discussions for the Union in agreeing on the
13 terms of that document?

14 A. Yes, I was.

15 Q. Okay. And what did the Union agree to, in terms as how
16 the election would be conducted?

17 A. It would be done in a mail ballot election.

18 Q. And when did the Union agree for the mail ballots to be
19 mailed out to eligible voters?

20 A. To the best of my recollection, May 25th.

21 Q. And when did the Union agree that mail ballots would be
22 required to be returned to be counted?

23 A. June 8th.

24 Q. Did the Union also receive a voter eligibility list or
25 Excelsior list from the Employer, as required by this

1 stipulated election agreement?

2 A. Yes, we did.

3 Q. Okay. And did you have an opportunity to review the
4 Excelsior list prepared by the Employer?

5 A. Yes, I did.

6 **(Charging Party's Exhibit 2 marked for identification.)**

7 Q. BY MS. WALKER: Okay. Now I'll have you refer to
8 Charging Party's stack of exhibits, specifically CP-2. I'll
9 give you a chance to look at the document. It is Bates stamp
10 AMS014 through AMS032.

11 A. Yes, ma'am.

12 Q. Are you familiar with this document?

13 A. Yes, I am.

14 Q. And what is this document?

15 A. This is the Excelsior list that was provided to the
16 Union from the Employer.

17 Q. And when did the Union receive this voter list?

18 A. We received it on Tuesday, May 10th, 2016.

19 MS. WALKER: At this time, Your Honor, I'd like to move
20 to introduce CP-2.

21 MR. HEARING: No objection.

22 JUDGE ROSAS: The Charging Party's Exhibit 2 is
23 received.

24 **(Charging Party's Exhibit 2 received in evidence.)**

25 Q. BY MS. WALKER: All right. In reviewing what's been

1 marked as CP-2, did you find any omissions of eligible voters
2 on the list?

3 A. Yes, we did.

4 Q. And were there other problems with the Excelsior list?

5 A. There was. There were some correct -- incorrect
6 addresses and phone numbers.

7 **(Charging Party's Exhibit 3 marked for identification.)**

8 Q. BY MS. WALKER: Okay. Now I'd like you to look at
9 what's been marked as CP-3. It's Bates stamp numbers AMS033
10 through AMS051. And do you recognize this document?

11 A. Yes, I do.

12 Q. What is this document?

13 A. This is an amended Excelsior list where we were checking
14 to see if people were added or removed.

15 Q. Okay. And where did the Union receive this document, or
16 from whom did the Union receive this document?

17 A. From our counsel, Ms. Kim Walker.

18 Q. Who prepared the document?

19 A. AMS.

20 Q. And when did the Union receive CP-3?

21 A. Tuesday, May 17th, 2016.

22 MS. WALKER: At this time, Your Honor, we'd like to move
23 to admit CP-3 into evidence.

24 MR. HEARING: No objection.

25 JUDGE ROSAS: Charging Party 3 is received.

1 **(Charging Party's Exhibit 3 received in evidence.)**

2 **(Charging Party's Exhibit 4 marked for identification.)**

3 Q. BY MS. WALKER: All right, Mr. Bontempo, now I'd like
4 you to refer to what's been marked as CP-4. And it's --

5 A. Yes, ma'am.

6 Q. -- Bates stamp number AMS052. Do you recognize this
7 document?

8 A. Yes, ma'am. I do.

9 Q. And what is this document?

10 A. This is a request from the Employer to add an additional
11 employee to the Excelsior list.

12 Q. And when did the Union receive this document?

13 A. Friday, May 20th, 2016.

14 MS. WALKER: All right. The Union would like to move to
15 admit or introduce into evidence CP-4.

16 MR. HEARING: No objection.

17 JUDGE ROSAS: Charging Party's 4 is received in
18 evidence.

19 **(Charging Party's Exhibit 4 received in evidence.)**

20 Q. BY MS. WALKER: Mr. Bontempo, are you aware of the
21 Employer's attempt to exclude employees from the Excelsior
22 list?

23 A. Yes.

24 MR. HEARING: Objection to form.

25 JUDGE ROSAS: I'm sorry. Repeat the question.

1 MS. WALKER: Sure.

2 Q. BY MS. WALKER: Mr. -- I'll rephrase it. Mr. Bontempo,
3 did the Union receive any information from the Employer that
4 it sought to identify employees as quit or discharged without
5 cause who were already identified on the Excelsior list?

6 A. Yes, ma'am. That's correct.

7 **(Charging Party's Exhibit 5 marked for identification.)**

8 Q. BY MS. WALKER: Okay. I'd like for you to refer to
9 what's been marked as CP-5. And that -- further identified
10 as AMS053 and 054.

11 A. Yes, ma'am.

12 Q. Do you recognize this document?

13 A. Yes, I do.

14 Q. And what is this document?

15 A. These are the employees that were originally on the
16 Excelsior list but updated as quit, no longer employed.

17 Q. And when did the Union receive this document?

18 A. Monday, May 23rd, 2016.

19 MS. WALKER: And at this time we'd like to move to
20 introduce CP-5 into evidence.

21 MR. HEARING: I have no objection.

22 JUDGE ROSAS: Charging Party 5 is received.

23 **(Charging Party's Exhibit 5 received in evidence.)**

24 **(Charging Party's Exhibit 6 marked for identification.)**

25 Q. BY MS. WALKER: All right. And Mr. Bontempo, turning to

1 what's been marked as CP-6, AMS055 through 056. Take your
2 time, and tell me if you recognize this document.

3 A. Yes, I do.

4 Q. Okay. And what is this document?

5 A. This is also some employees that were originally on the
6 list that were then updated to no longer employed or quit.

7 Q. And are these the same employees that were listed in
8 CP-5, or are they different employees?

9 A. No, ma'am. These are additional employees.

10 Q. And when did the Union receive this document?

11 A. On Tuesday, May 24th, 2016.

12 MS. WALKER: Okay. At this time, we'd like to move to
13 introduce CP-6 into evidence.

14 MR. HEARING: No objection.

15 JUDGE ROSAS: Charging Party's 6 is received.

16 **(Charging Party's Exhibit 6 received in evidence.)**

17 Q. BY MS. WALKER: Did the Union also determine, based on
18 its own records, that eligible employees had been omitted
19 from the voter list?

20 A. Yes, ma'am.

21 Q. What information did the Union utilize to determine that
22 certain employees were improperly omitted from the voter
23 list?

24 A. There are two ways that we can identify folks. We have
25 a system that is in place by the International, we refer to

1 as BACWorks. And we also have reporting forms that we
2 receive from the contractors.

3 Q. Okay. And in regard to BACWorks, where do we get
4 that -- where does the Union get that information?

5 A. That information would be gathered off the reporting
6 forms from the contractor.

7 Q. And is it a program that keeps up with the hours of the
8 employees?

9 A. Yes, ma'am. It is.

10 Q. Okay. Prior to the filing of the petition by the Union
11 on April 30th, 2016, was AMS a signatory employer?

12 A. Yes, they were.

13 Q. Do you know how long it had been a signatory employer?

14 A. To the best of my knowledge, somewhere in the late '80s
15 would be my best guess that I could testify to.

16 Q. How does the Union use the information from BACWorks or
17 the reporting forms from the Employer to determine
18 eligibility for voting in this election?

19 A. Can you repeat that?

20 Q. Sure. How did the Union utilize the information from
21 BACWorks and the reporting forms to determine eligibility for
22 voting in the election with AMS?

23 A. We used that system in a way so we could tell if they
24 had enough hours employed, per the Steiny/Daniel list, for
25 the period of time for the election.

1 Q. Does the BACWorks program provide hourly information on
2 all employees or just union members?

3 A. The BACWorks system would just be union members.

4 Q. Can the Union get hourly information on non-union
5 employees through other reporting forms?

6 A. Yes, ma'am. We can.

7 Q. And what are those forms?

8 A. Those are the International fringe benefit reporting
9 forms that are reported from the contractor.

10 **(Charging Party's Exhibits 22 and 23 marked for**
11 **identification.)**

12 Q. BY MS. WALKER: All right. This is going to be a little
13 out of order, but if you'll refer to what's been marked,
14 further on through that pile, as CP-22 and CP-23. CP-22 is
15 Bates stamp AMS076 through AMS084, and CP-23 is Bates stamp
16 number AMS085 through 093. Let's start with CP-22. What is
17 this document?

18 A. This is a International fringe benefits reporting form.

19 Q. And who uses these forms?

20 A. The Employer uses them to report the hours worked.

21 Q. And in looking at CP-23, do you recognize that document?

22 A. Yes, ma'am. I do.

23 Q. And is that document a similar document to CP-22?

24 A. That is correct.

25 Q. Do you know the difference between these two documents?

1 A. Well, probably a different month of the reporting.

2 Q. Okay. Is CP-23 a report for January 2016?

3 A. Yes, ma'am. It is.

4 Q. And is CP-22 a report for December 2015?

5 A. That is correct.

6 Q. And in your capacity as a field representative, would
7 you also receive a copy of these forms?

8 A. Yes, ma'am.

9 MS. WALKER: At this time we'd move to admit both CP-22
10 and CP-23 into evidence.

11 MR. HEARING: Was that 22 and 23?

12 MS. WALKER: Yes.

13 MR. HEARING: I have no objection.

14 JUDGE ROSAS: Charging Party 22 and 23 are received.

15 **(Charging Party's Exhibits 22 and 23 received in evidence.)**

16 Q. BY MS. WALKER: Now, the information that is down in
17 CP-22 and 23 is provided by AMS; is that correct?

18 A. That is correct.

19 Q. And the information that the Union inputs into BACWorks
20 is also provided from AMS or any other signatory employer
21 that is reporting; is that correct?

22 MR. HEARING: Object to the form. Leading.

23 MS. WALKER: Okay.

24 JUDGE ROSAS: Sustained.

25 Q. BY MS. WALKER: What does the Union base its hourly

1 reports in BACWorks on?

2 A. The fringe benefit contribution forms.

3 Q. If AMS did not report all hours on employees, would the
4 Union have information from any other sources other than the
5 fringe benefits reports or dues reports?

6 A. No, ma'am.

7 Q. Does the BACWorks program provide contact information on
8 all employees or just union members?

9 A. Just union employees.

10 Q. And do the reporting forms from the Employer, like CP-22
11 and CP-23, contain any contact information on the individual
12 employees?

13 A. No, ma'am. It don't. It's strictly hours worked.

14 Q. So if an individual is not a member of the Union, would
15 the Union have any way of getting contact information on
16 those employees?

17 A. Yes. Only through jobsite visits would that be
18 achieved.

19 Q. But the reporting forms do not contain -- the fringe
20 benefit reporting forms do not contain addresses or phone
21 numbers; is that correct?

22 A. That --

23 MR. HEARING: Objection. Asked and answered, and
24 leading.

25 MS. WALKER: Fair enough.

1 JUDGE ROSAS: I'll allow that. We already have it in
2 the record, pretty much. Go ahead.

3 THE WITNESS: That is correct.

4 Q. BY MS. WALKER: Can AMS identify a union member versus a
5 non-union member from its employees' records?

6 A. Yes, they can.

7 Q. And how can they do that?

8 A. I think they can do it in two ways. There is a part of
9 their application where a new hire would have the opportunity
10 to check the block on their application whether they're union
11 or not, and then also, I send work referrals to the Employer
12 as a new hire would start.

13 **(Charging Party's Exhibit 24(a) through (h) marked for**
14 **identification.)**

15 Q. BY MS. WALKER: Okay. Let me refer you to what's been
16 marked as CP-24(a) through (h). And this can also be
17 identified as Union 000283; (b) is Union 000323; (c) is Union
18 000468; (d) is Union 000488; (e) is Union 000260; (f) is
19 000535; (g) is 000564; and (h) is 001349.

20 Have you had an opportunity to review these documents?

21 A. Yes, ma'am. I did.

22 Q. What are these documents?

23 A. These are work referrals that I would send to the
24 office, notifying AMS that these are union employees or union
25 members.

1 Q. And did you send these work referrals?

2 A. Yes, ma'am. I did.

3 MS. WALKER: At this time, the Petitioner would move to
4 admit CP-24(a) through (h) into evidence.

5 MR. HEARING: I'm just checking the dates for relevance,
6 if I may have a moment. No objection.

7 JUDGE ROSAS: Charging Party 24(a) through (h) is
8 received.

9 **(Charging Party's Exhibit 24(a) through (h) received in**
10 **evidence.)**

11 **(Charging Party's Exhibit 7 marked for identification.)**

12 Q. BY MS. WALKER: Okay, Mr. Bontempo, let me refer you to
13 what's been marked as CP-7.

14 A. Yes, ma'am.

15 Q. Okay. Do you recognize this document?

16 A. Yes, I do.

17 Q. And what is this document?

18 A. This is where, in particular -- I know it's hard to see
19 on this copy, that we were requesting four more ballots that
20 we found to be eligible voters.

21 Q. And who was the Union requesting that to -- making that
22 request to?

23 A. To the Board agent.

24 Q. And when did the Union make this request?

25 A. This request was made on Wednesday, May 25th, 2016.

1 MS. WALKER: At this time, Petitioner would move to
2 admit CP-7 into evidence.

3 MR. HEARING: No objection

4 JUDGE ROSAS: Charging Party's 7 is received.

5 **(Charging Party's Exhibit 7 received in evidence.)**

6 Q. BY MS. WALKER: In regards to CP-7, how did the Union
7 identify these individuals as eligible to vote?

8 A. Again, it would be through the BACWorks system and/or
9 reporting forms.

10 **(Charging Party's Exhibit 8 marked for identification.)**

11 Q. BY MS. WALKER: Q. Okay. Now, I'd like you to refer to
12 what's been marked as CP-8. Do you recognize this document?

13 A. Yes, ma'am. I do.

14 Q. And what is this document?

15 A. Again, this is where we are requesting more additional
16 ballots for the election.

17 Q. And when did the Union make this request?

18 A. On Wednesday, May 25th, 2016.

19 Q. Was this request also made to the Regional Office?

20 A. Yes, ma'am. It was.

21 Q. How many additional ballots were requested by this
22 particular request?

23 A. I think this is the one where -- the highlight is not
24 actually coming through on this one, but I -- four.

25 MS. WALKER: Okay. Petitioner moves to introduce CP-8

1 at this time.

2 MR. HEARING: Since there's apparently highlighting
3 that's not particularly marked, but the witness is indicating
4 that, from memory, that there's four of them, could we at
5 least have a designation of which four there are, before I
6 can determine whether to make an objection to it or not?

7 MS. WALKER: Certainly. Let me see if I can find the
8 original copy or the original document from which the copy
9 was made.

10 Q. BY MS. WALKER: Mr. Bontempo, I think we can do it
11 another way. If you will refer to CP-7 and compare that to
12 CP-8, can you identify the individuals that are new to CP-8
13 that were not on CP-7?

14 A. Yes, ma'am.

15 Q. Okay. And who are those?

16 A. The first one is a gentleman by Mr. -- by the name of
17 Mr. Herbert Dyal.

18 Q. Okay.

19 A. The second one would be a Mr. Richard Haser. The fourth
20 [sic] one appears to be a gentleman by the name of Omar
21 McNeish. And the fourth one appears to be a Mr. Ryan Moore.

22 Q. And are the four additional, only four additional
23 individuals named in CP-8 as opposed to CP-7?

24 A. Yes, ma'am. That would be correct.

25 MR. HEARING: So with that predicate laid, no objection.

1 JUDGE ROSAS: Charging Party 8 is received.

2 **(Charging Party's Exhibit 8 received in evidence.)**

3 **(Charging Party's Exhibit 9 marked for identification.)**

4 Q. BY MS. WALKER: Q. BY MS. WALKER: Now, Mr. Bontempo,
5 I'm going to refer you to what's been identified as CP-9,
6 AMS061 and 062. Do you recognize this document?

7 A. Yes, ma'am. I do.

8 Q. And what is this document?

9 A. That is a request for one new ballot and correct
10 addresses for three of the existing voters.

11 Q. And did the Union send this request to the Region?

12 A. Yes, ma'am. We did.

13 Q. And when did the Union make this request?

14 A. Thursday, May 26, 2016.

15 Q. How did the Union get the information to make this
16 request?

17 A. Again, this would be achieved through the BACWorks
18 system and/or reporting forms.

19 Q. If any of these individuals were not members, how would
20 the Union have gotten this information?

21 A. Through jobsite visits.

22 MS. WALKER: At this time we'd move to admit
23 Petitioner's CP-9 into evidence.

24 MR. HEARING: No objection.

25 JUDGE ROSAS: Charging Party 9 is received.

1 **(Charging Party's Exhibit 9 received in evidence.)**

2 **(Charging Party's Exhibit 10 marked for identification.)**

3 Q. BY MS. WALKER: Mr. Bontempo, I'd like for you to review
4 what's been marked as CP-10. Do you recognize this document?

5 A. Yes, I do.

6 Q. And what is this document?

7 A. We discovered an address change and were requesting a
8 new ballot from the Board.

9 Q. And when did the Union send this request?

10 A. This request was sent on Thursday, June 2nd, 2016.

11 MS. WALKER: Petitioner moves to admit CP-10 into
12 evidence.

13 MR. HEARING: No objection.

14 JUDGE ROSAS: Charging Party 10 is received.

15 **(Charging Party's Exhibit 10 received in evidence.)**

16 **(Charging Party's Exhibit 11 marked for identification.)**

17 Q. BY MS. WALKER: Mr. Bontempo, I'd like you to -- refer
18 you to what's been marked as CP-11. Do you recognize this
19 document?

20 A. Yes, ma'am. I do.

21 Q. What is this document?

22 A. That's a request for a replacement ballot for a
23 Mr. Neville Copeland.

24 Q. And when did the Union make this request?

25 A. Thursday, June 2nd, 2016.

1 Q. And who was the request made to?

2 A. The Board. The Board.

3 MR. PETERSON: Petitioner moves to admit CP-11 into
4 evidence.

5 MR. HEARING: No objection.

6 JUDGE ROSAS: Charging Party 11 is received.

7 **(Charging Party's Exhibit 11 received in evidence.)**

8 **(Charging Party's Exhibit 12 marked for identification.)**

9 Q. BY MS. WALKER: All right, Mr. Bontempo, if you would
10 draw your attention to what's been identified as CP-12. Did
11 you recognize this document?

12 A. Yes, ma'am. I do.

13 Q. And what is this document?

14 A. This document is a request for additional mail ballots
15 that were not received.

16 Q. And when was this request made?

17 A. Monday, June 6th, 2016.

18 Q. Who did the Union make this request to?

19 A. To the Board agent.

20 MS. WALKER: At this time, Petitioner moves to introduce
21 CP-12 into evidence.

22 MR. HEARING: No objection.

23 JUDGE ROSAS: Charging Party 12 is received.

24 **(Charging Party's Exhibit 12 received in evidence.)**

25 Q. BY MS. WALKER: Was the Union's contact with eligible

1 voters negatively impacted due to the incompleteness of the
2 voter list provided by AMS?

3 A. Yes, it was.

4 Q. And in what ways?

5 A. We were unable to make contact with the voters.

6 Q. For the employees who were omitted and were not union
7 members, did the Union have any contact information on those
8 employees?

9 A. No, we did not.

10 Q. And how would the Union go about finding that
11 information?

12 A. Through jobsite visits.

13 Q. Prior to the filing of the election petition, were you
14 allowed access to employees at jobsite parking lots, before
15 and after work and during lunch at AMS?

16 A. Absolutely.

17 Q. And this was in your capacity as a field representative
18 for BAC Local 8?

19 A. That is correct.

20 Q. After the filing of the petition, did this access change
21 in any way?

22 A. Yes, it did.

23 Q. Okay. Can you explain how it became different?

24 A. Afterwards, when the petition was filed, during several
25 jobsites visit -- visits, I'm sorry, I was informed that I

1 was no longer welcome on the projects.

2 Q. Okay. So what -- I believe, at the time -- there's been
3 evidence in the record, that at the time the petition was
4 filed, there was a job being worked at the University of
5 Tampa; is that correct?

6 A. That is correct.

7 Q. And did you make a jobsite visit to the University of
8 Tampa after the petition was filed?

9 A. Yes, ma'am. I did.

10 Q. And what was the response of AMS management?

11 A. I was -- upon walking up to the job, I was greeted by --
12 MR. HEARING: Objection. Lack of predicate. Maybe he
13 was just going to say who it was, so --

14 JUDGE ROSAS: Overruled. You can answer.

15 THE WITNESS: Upon walking up on the job, I was greeted
16 by Mr. Brent McNett, known as Turbo. Told me to come on to
17 the jobsite, take a picture of the petition that was posted
18 on the Conex door, and then to remove myself from the
19 project.

20 Q. BY MS. WALKER: Did you speak to any other management of
21 AMS at that project that day?

22 A. I did. I spoke to a Mr. Marc Carney.

23 Q. Okay. And what did Mr. Carney say?

24 A. He also concurred what Mr. Brent McNett was saying,
25 that, you know, I was no longer welcome on the jobsite visits

1 at that particular location but could visit during break,
2 lunch, or quitting time.

3 Q. Okay. And prior to the filing of the petition, had you
4 visited the University of Tampa jobsite?

5 A. Yes, I did.

6 Q. And what was the result of those visits?

7 A. The results of those visits, that I would -- you know, I
8 had access to the job and to the members and/or non-members,
9 employees working the jobsite. And there were times I spent
10 up to or over an hour on the sites, visiting with Mr. Brent
11 McNett, Mario Morales, who is another foreman for AMS. So I
12 was welcomed and toured the jobsite.

13 Q. At that time, what was the purpose of those visits?

14 A. Just to, you know, check on the jobsite, check on the
15 members, check on the contractor needs also.

16 Q. Did you visit any other jobsites of AMS after the
17 petition was filed?

18 A. Yes, ma'am. I did.

19 Q. And what was the other jobsite that you visited?

20 A. I think, actually, on the same day as the University of
21 Tampa, I visited the Tampa Yacht Shore -- Yacht Club. Tampa
22 Yacht Shore or --

23 Q. Is that what we've heard evidence referred to as
24 Westshore Yacht Club?

25 A. Westshore Yacht Club. Yes, ma'am. It is.

1 Q. Okay. And was that on the same day, you think, as the
2 University of Tampa job visit?

3 A. Yes, it was.

4 Q. And were you met by any management of AMS at that
5 jobsite?

6 A. Yes, I was.

7 Q. Who were you met with?

8 A. A gentleman by the name of Mr. Coy Hale.

9 Q. And what did Mr. Hale say?

10 A. Emphatically, that I was no longer welcome on his
11 jobsites and I needed to leave.

12 Q. Did he restrict that requirement to off work time as
13 well as during work?

14 A. That is correct; no access, period.

15 Q. Had you been to the Westshore Yacht Club prior to the
16 filing of the petition?

17 A. Many, many times.

18 Q. And what was the result of those visits?

19 A. Again, spent, you know, many hours visiting the
20 jobsites, walking the foreman and -- in the beginning of the
21 job -- the job was started by Mr. Todd Wolosz. So I would go
22 out and -- from time to time, Todd would call me out there,
23 to come out to the jobsite to pay his union dues, visit the
24 job, whether the contractor was needing manpower coming up in
25 the future. So there were a lot of reasons and a lot of job

1 visits throughout that job.

2 Q. Okay. Did you visit any other jobsites after the filing
3 of the petition?

4 A. Yes, I did.

5 Q. Okay. What was the next jobsite you visited?

6 A. There was a hotel project in St. Pete. I don't know
7 exactly what hotel chain it was, but it was across from Bay
8 Pines Hospital, VA hospital.

9 Q. And how was your visit received at that jobsite?

10 A. I was informed again, emphatically, by Mr. Brian
11 Canfield, that again, we were no longer welcome on the
12 jobsites and parking lots, at any time, period.

13 Q. And you understood that you could not visit those
14 jobsites even after work hours; is that correct?

15 A. That is --

16 MR. HEARING: Objection --

17 JUDGE ROSAS: Sustained.

18 MR. HEARING: -- to the form.

19 JUDGE ROSAS: Stricken.

20 MS. WALKER: Let me rephrase that.

21 Q. BY MS. WALKER: When Mr. Canfield approached you at that
22 visit, did he tell you that you could not visit the jobsite
23 after hours?

24 A. Yes, he did.

25 Q. Had you visited that St. Pete hotel jobsite prior to the

1 petition being filed?

2 A. Yes, ma'am.

3 Q. And what was the difference between that visit and the
4 visit after the petition was filed?

5 A. Oh, there were no restrictions on my first visit. I was
6 able to engage in conversation with members, non-members,
7 employees.

8 Q. Any other site -- did you visit any other sites after
9 the petition was filed?

10 A. I did. There also was another jobsite, and I think I
11 referred to it yesterday. It was down in St. Pete. I think
12 the address was 1 1st Street, Avenue, South. Now, I can't be
13 quoted on that a hundred percent. I don't know the name of
14 it. It was a townhouse, condominium type project.

15 Q. And what was the reaction from AMS management at that
16 jobsite?

17 MR. HEARING: Objection. Lack of predicate.

18 MS. WALKER: Fair enough.

19 MR. HEARING: As to what they were talking about.

20 JUDGE ROSAS: What was the reaction of management? Oh,
21 if any. Go ahead.

22 THE WITNESS: I was greeted by Mr. Johnny Wheeler. And
23 again, that I was told that I was no longer welcome on the
24 jobsite.

25 Q. BY MS. WALKER: Who is Johnny Wheeler?

1 A. Johnny Wheeler is a -- was an employee of AMS. I think
2 he was acting straw boss on that particular day because Brian
3 Canfield was moved to another project and Johnnie was
4 wrapping that project up.

5 Q. What did Johnny Wheeler say to you at that visit?

6 A. That I knew better, that I was no longer welcome on
7 these projects.

8 Q. Had you visited that jobsite before the filing of the
9 petition?

10 A. Oh, absolutely.

11 Q. And was Mr. Wheeler the person for AMS running that job,
12 or was it someone else?

13 A. That would have been a Mr. Brian Canfield at the time.

14 Q. Was this visit the first time you'd seen Mr. Wheeler as
15 the person in charge on that jobsite?

16 A. Yes, it was.

17 Q. After you visited these jobsites for the first time
18 after filing the petition, did you return to those sites
19 after you were asked not to come back?

20 A. Not to the best of my knowledge, no.

21 Q. Did you make any visits to Bethune-Cookman after the
22 filing of the petition?

23 A. I'm sure I have.

24 Q. But you don't have any specific recollection?

25 A. Not after the petition was filed.

1 Q. Okay. Were your jobsite visits the primary way that you
2 contacted employees of AMS?

3 A. Absolutely.

4 Q. Did you contact them, and communicate with employees of
5 AMS more through jobsite visits, or telephone calls and e-
6 mails?

7 A. Jobsite visits.

8 Q. Did the instruction that you should not visit the
9 jobsites at all, or at certain times, from AMS negatively
10 impact and hamper your contact with employees at AMS?

11 A. Yes, it did.

12 Q. Did any employees complain to you about not seeing you
13 on the jobsite anymore?

14 A. Yes, they did.

15 Q. How many employees complained?

16 A. If I had to take a stab --

17 MR. HEARING: Objection. Hearsay.

18 JUDGE ROSAS: Sustained.

19 Q. BY MS. WALKER: Do you know any employees complained to
20 you about you no longer visiting the jobsites at AMS?

21 MR. HEARING: Objection.

22 JUDGE ROSAS: Sustained. Any that you're going to call
23 on cross -- any that you're going to call, I'm sorry, to
24 corroborate.

25 MS. WALKER: Okay.

1 JUDGE ROSAS: Or otherwise reflected in documentation.

2 Q. BY MS. WALKER: Are you aware of any other individuals
3 or groups that are permitted to have access to AMS employees
4 during the work day?

5 A. Yes, I am.

6 Q. And who would they be?

7 MR. HEARING: Objection. Lack of predicate knowledge.

8 JUDGE ROSAS: Let's see where it goes. We'll strike it
9 if it doesn't have it.

10 MS. WALKER: I can lay a foundation.

11 JUDGE ROSAS: Go ahead.

12 Q. BY MS. WALKER: Mr. Bontempo, as a superintendent of
13 AMS, and as a field representative for Local 8, have you
14 observed other groups or individuals having access to AMS
15 employees?

16 A. Yes, I did.

17 Q. And did they have this access during work time?

18 A. Yes, ma'am.

19 Q. Did they have this access at jobsites?

20 A. Yes, ma'am.

21 Q. Okay. And who were those groups?

22 A. Primarily food trucks.

23 Q. And as a supervisor at AMS, did you allow employees to
24 use food trucks on break and at lunch?

25 A. Oh, absolutely.

1 Q. As a superintendent of AMS, were you ever told by upper
2 management that employees could not visit and patronize the
3 food trucks at break and at lunch?

4 A. No, I was not.

5 Q. Did the practice of employees having access to food
6 trucks continue when you were a field representative for
7 Local 8?

8 A. Yes, it did.

9 Q. And how do you know that?

10 A. From jobsite visits.

11 Q. Did these trucks park in the parking lots at the
12 projects and jobs?

13 A. Yes, they did.

14 Q. Does the -- strike that.

15 You testified earlier that the Union maintains records
16 of hours worked by members for signatory employers; is that
17 true?

18 A. That is true.

19 Q. Would those records indicate if employees worked at
20 least 30 days in the 12-month period preceding the election
21 eligibility?

22 A. Yes, it would.

23 Q. And would those records also indicate if those employees
24 worked at least 45 working days within 24 months preceding
25 the election eligibility date?

1 A. Yes, it would.

2 MS. WALKER: For the purpose of the record, can we
3 stipulate that this period that I just questioned him about
4 is the standard annual eligibility period?

5 MR. HEARING: What period, specifically?

6 MS. WALKER: Specifically, 30 days in 12 months
7 preceding the eligibility --

8 MR. HEARING: Sure.

9 MS. WALKER: -- date, and 45 days in the 24 months
10 preceding the eligibility date, with some employment in the
11 12 months preceding the eligibility date.

12 MR. HEARING: Sure.

13 MS. WALKER: Okay. Fair enough. Thank you.

14 JUDGE ROSAS: So it's my understanding that -- formally.

15 MR. HEARING: That's the law.

16 **(Charging Party's Exhibit 13 marked for identification.)**

17 Q. BY MS. WALKER: All right, Mr. Bontempo, I would like to
18 refer you to what's been marked as CP-13.

19 A. Yes, ma'am.

20 Q. And do you recognize this document?

21 A. Yes, I do.

22 Q. What is this document?

23 A. This is a document of reported hours on Mr. George Reed
24 through our BACWorks system.

25 MR. HEARING: I'm going to object to the questioning of

1 this witness about the ballot challenges now. This is now
2 ballot challenge evidence, I believe.

3 MS. WALKER: No. Your Honor, this is still
4 documentation and evidence related strictly to compilation of
5 the Excelsior list, and the hours some of the individuals
6 that -- the only individuals we're going to address are those
7 that were omitted from the Excelsior list that we contend had
8 sufficient hours.

9 MR. HEARING: Okay. I misunderstood why you were
10 offering it.

11 MS. WALKER: No. It will be limited to that at this
12 time. And with that, Petitioner moves to admit CP-13.

13 MR. HEARING: Well, did he identify it?

14 Q. BY MS. WALKER: Have you identified it?

15 A. Yes.

16 Q. Yeah.

17 A. It's hours reported in our BACWorks system for a
18 Mr. George Reed.

19 MR. HEARING: May I have a question for the witness?

20 JUDGE ROSAS: Voir dire.

21 **VOIR DIRE EXAMINATION**

22 Q. BY MR. HEARING: Did you prepare this document?

23 A. No, I did not.

24 Q. Do you have any idea whether these figures or hours are
25 accurate?

1 A. Yes, from the reporting forms that are reported from the
2 contactor. Yes, I do.

3 Q. Well, did you check those reporting forms before they
4 were inputted into your system?

5 A. Yes, sir.

6 Q. Oh, you did?

7 A. Yes. The reporting forms are --

8 Q. Where are the reporting forms that relate to this
9 witness or this individual that support these hours?

10 A. I don't know if I have the reporting forms with me at
11 this present time, if that's what you're asking me.

12 Q. Yeah. I'm asking where they are. Where would they be?

13 A. They would be kept in our office, our main office.

14 Q. All right. And then you already said you didn't
15 transfer the information from the reporting forms into the
16 system itself --

17 A. That is correct.

18 Q. -- and turn this out; is that correct?

19 A. That is correct.

20 Q. So this could have been inputted incorrectly, correct?

21 A. I guess it could have.

22 MR. HEARING: That's all I have. Object to its
23 admission, then, based upon lack of foundation as to the
24 authenticity, the accuracy of the reflected amounts in it.

25 JUDGE ROSAS: Do you have any additional voir dire?

1 MS. WALKER: This -- yes, Your Honor, I do.

2 Q. BY MS. WALKER: Mr. Bontempo, is this a printout from
3 the Union's BACWorks program?

4 A. Yes, ma'am. It is.

5 Q. Is the BACWorks program the program regularly used in
6 the normal course of business for the International Union of
7 Bricklayers and Allied Craftworkers and for Local 8
8 Southeast?

9 A. Yes, ma'am. It is.

10 JUDGE ROSAS: Okay. Sir, who in the ordinary course of
11 business inputs the supporting documentation into the system?

12 THE WITNESS: That would be done by our admins in our
13 main office.

14 JUDGE ROSAS: Okay. I'm going to receive the document
15 over objection. There's a sufficient showing on voir dire
16 examination and the direct examination indicating that the
17 document is what it appears to be, which is a printout from
18 their BACWorks system.

19 That doesn't preclude counsel, on cross-examination,
20 further cross-examination, from probing further and/or
21 seeking to obtain the underlying documents that would be
22 source of this. But the standard is, for receipt of
23 evidence, that the document offered in evidence is more
24 likely than not to be what it purports to be.

25 So that's been indicated by the witness, and I'll

1 receive it for that purpose. Charging Party 13 is received.

2 **(Charging Party's Exhibit 13 received in evidence.)**

3 **DIRECT EXAMINATION (cont.)**

4 Q. BY MS. WALKER: Okay. Mr. Bontempo, could you refer to
5 what's been marked as CP-23?

6 A. Yes, ma'am.

7 Q. And once you get there, I'll tell you the specific page.

8 A. Okay.

9 Q. It's AMS086.

10 A. Yes, ma'am.

11 Q. Okay. And this is -- could you tell me if Mr. George
12 Reed is listed as an employee on this particular exhibit?

13 A. Yes, I can.

14 Q. Okay. And how many hours does it reflect that he worked
15 during the January 2016 time period?

16 A. 203½.

17 Q. Okay. And then looking back at CP-13 --

18 A. Yeah.

19 Q. -- does this document reflect a number of hours worked
20 by Mr. Reed on January 2016?

21 A. Yes, it does.

22 Q. And what does it reflect?

23 A. 203.5 hours.

24 MS. WALKER: Thank you.

25 JUDGE ROSAS: Counsel, I notice you had marked for

1 identification additional similar documents.

2 MS. WALKER: Yes, Your Honor.

3 JUDGE ROSAS: If you could do them all en masse, as one.

4 MS. WALKER: Oh, I certainly can. Okay.

5 **(Charging Party's Exhibits 14 through 18 marked for**
6 **identification.)**

7 Q. BY MS. WALKER: Mr. Bontempo?

8 A. Yes, ma'am.

9 Q. If you will refer to CP-14.

10 A. Yes, ma'am.

11 Q. And what is this document?

12 A. This document is on a Mr. Robert Baker through our
13 BACWorks system, generated off the reporting forms for hours
14 reported.

15 Q. And CP-15?

16 A. That would be a similar thing, but it would be for
17 Mr. Raymond Pearson.

18 Q. And then looking at CP-16, could you identify this
19 document?

20 A. Yes. Again, it is the BACWorks printout on a Mr. Robert
21 Harvey, generated from the reporting forms from the
22 contractor.

23 Q. And then looking at CP-17, could you identify this
24 document?

25 A. Yes, ma'am. That is the same, same document on a

1 Mr. Robert Pietsch.

2 Q. And finally, in looking at what's been marked as CP-18,
3 what is this document?

4 A. That is also the same document as we previously
5 discussed, on a member, employee Mr. David Wrench.

6 MS. WALKER: Okay. Petitioner moves to admit all of
7 these exhibits into evidence.

8 MR. HEARING: Same objection as prior.

9 JUDGE ROSAS: That would be Charging Party's 14 through
10 18?

11 MS. WALKER: Yes, Your Honor.

12 JUDGE ROSAS: Okay. Any voir dire, or just based on the
13 previous --

14 MR. HEARING: Just --

15 JUDGE ROSAS: -- voir dire and rationale and objection?

16 MR. HEARING: Yes, sir. No --

17 JUDGE ROSAS: Okay. So --

18 MR. HEARING: -- need to burden the record any further.

19 JUDGE ROSAS: Okay. So based on my previous ruling,
20 ruling is similar here, for Charging Party's 14 through 18.
21 They're received.

22 **(Charging Party's Exhibits 14 through 18 received in**
23 **evidence.)**

24 MS. WALKER: To further limit the testimony, I think, if
25 we could have a judicial recognition of working days in a

1 calendar month, in order not to go through the calculation,
2 the process with the witness, the Union seeks to have a
3 judicial recognition that there are at least 20 working days
4 in a given month, or judicial recognition for the months that
5 are covered in the eligibility period, the working days are
6 the number that are shown on the calendar during that time.

7 MR. HEARING: I'm telling Your Honor, I don't have a
8 problem with any of -- again, I think this is being offered
9 for the challenge of ballots because of our defenses that
10 these people either voluntarily quit or were discharged. And
11 we're not saying that they didn't work the requisite days
12 under the doctrine, if that helps. That's not our defense.
13 It's that they fall under one of the two exceptions that
14 we've asserted. Either they voluntarily quit or they were
15 discharged.

16 So I don't think we're going to dispute the number of
17 days, whether they worked 30 or the 45, if that's helping
18 counsel, so --

19 JUDGE ROSAS: You, for your purposes, need to establish
20 an average?

21 MS. WALKER: Well, the way that the Steiny/Daniel
22 eligibility form is set up, it's set up on --

23 JUDGE ROSAS: Twelve months.

24 MS. WALKER: -- days. It's set up on days in a month in
25 a 12-month period.

1 JUDGE ROSAS: Yeah.

2 MS. WALKER: However, the only records that the Union
3 has, or that's been received from the Employer, is hours that
4 those individuals worked, not the days that they worked.
5 This goes toward the Union's objection about completeness of
6 the voter list, and with individuals excluded, who would have
7 worked a sufficient number of days, and they were not on that
8 Excelsior list. And so I need a way to compute hours into
9 days to satisfy that formula.

10 JUDGE ROSAS: Well, how do you propose to do that?

11 MS. WALKER: I propose to get a recognition, judicial
12 recognition of the number of working days in a month, and
13 testimony from Mr. Bontempo as to the shifts, the number of
14 hours worked in a day by employees at AMS, and then do the
15 calculation with the hours.

16 JUDGE ROSAS: Hold on a second.

17 MR. HEARING: Well, our position on the ones that were
18 omitted were, we omitted them because of, they were either a
19 voluntary quits, or they were discharged for cause. So I'm
20 not really sure where we're going with the hours.

21 MS. WALKER: Okay. I think with that stipulation
22 agreement from Respondent counsel, Petitioner would have
23 sufficient evidence to make its arguments in the brief.

24 JUDGE ROSAS: Let me just make sure, because I want to
25 make sure that the record is going to be sufficient for my

1 purposes, so I'm not leaving to infer anything. A lot of
2 times, the parties proceed down parallel tracks, and they
3 leave the finder of fact to leap to infer or not infer, one
4 way or the other. So let me just --

5 **Off the record.**

6 **(Off the record from 10:30 a.m. to 10:35 a.m.)**

7 JUDGE ROSAS: All right. So we had an off-the-record
8 discussion regarding counsel's request for me to take
9 administrative notice of how many work days in a month there
10 are, based on the normal year of 365 days. The calculations
11 that one comes out to, based on, I believe it's an average of
12 4.33 weeks in a month, that computes out to an average of
13 21.7 work days in a month. That's the mathematical
14 computation, based on a regular year.

15 MR. HEARING: Okay.

16 MS. WALKER: Thank you, Your Honor.

17 Q. BY MS. WALKER: Mr. Bontempo, can I refer you to what's
18 been marked as GC-14?

19 A. Yes, ma'am.

20 Q. And does this document provide information related to
21 the regular hours worked or shifts worked by employees of
22 AMS?

23 A. Yes, it does.

24 Q. Okay. And if I could refer you to page 8 of -- I'm
25 sorry, page 11 of 22, of that exhibit, for reference.

1 A. Page 11 of?

2 Q. I'm sorry. In the same exhibit, it's page 11 of 22, at
3 the top of the page. This is -- I'm sorry, this is GC-14.
4 General Counsel's exhibit, it's probably under that stack
5 there.

6 JUDGE ROSAS: Here. I'll show you mine.

7 THE WITNESS: Thank you, Your Honor. Page 11?

8 Q. BY MS. WALKER: Yes. Okay. And just from your
9 testimony, and not necessarily -- I don't want you to read
10 from the document, but in your experience as a superintendent
11 at AMS and as a field rep of Local 8, what types of shifts
12 could be worked by AMS employees?

13 A. Basically 8-hour shifts.

14 Q. Okay. Could they work different combinations of shifts?

15 A. They could.

16 Q. And what would those be?

17 A. There could be, you know, in a week, four 10s, an 8, for
18 a Monday through Friday. And then, of course, there have
19 been Saturdays. Could vary anywhere from 5 to 8 hours on a
20 Saturday.

21 Q. Okay. And regardless of the shift, do employees work an
22 average of 40 hours in a given week?

23 A. Yes, they do.

24 Q. How often is overtime worked?

25 A. That is project driven, so --

1 MR. HEARING: Objection. Relevance.

2 JUDGE ROSAS: State your question again?

3 MS. WALKER: How often is overtime worked?

4 JUDGE ROSAS: You say it's irrelevant?

5 MR. HEARING: Relevance, because if they're up to 40
6 hours, then, you know, that's the question, I think, about
7 the work week and the hours that --

8 MS. WALKER: He said an average of 40 hours.

9 JUDGE ROSAS: Okay.

10 MS. WALKER: So I was asking how often overtime is
11 worked, additional, in -- you know, in excess of 40 hours in
12 a week.

13 JUDGE ROSAS: What's the relevance to the ultimate
14 computations, based on overtime, if any?

15 MS. WALKER: Well, fair enough.

16 JUDGE ROSAS: Okay.

17 MS. WALKER: I withdraw the question. We don't need it.

18 **(Charging Party's Exhibits 25(a) and 25(b) marked for**
19 **identification.)**

20 Q. BY MS. WALKER: All right, Mr. Bontempo, I'd like to
21 refer you to what's been marked as CP-25(a) and (b). These
22 are the stickers, and it's the very bottom of your stack.

23 A. Yes, ma'am.

24 Q. All right. Do you recognize what's been marked as
25 CP-25(a) and CP-25(b)?

1 A. Yes, I do.

2 Q. What are these --

3 A. These are hard --

4 Q. -- copies of?

5 A. These are hard hat stickers that we give out during our
6 jobsite visits to anyone that wants one.

7 Q. Did you give these stickers out, or stickers like
8 CP-25(a) and (b), to employees of AMS?

9 A. Yes, I did.

10 Q. And did they put them on their hard hats?

11 A. Yes, ma'am. They did.

12 MS. WALKER: Petitioner moves to admit CP-25(a) and
13 25(b) into evidence.

14 MR. HEARING: No objection.

15 JUDGE ROSAS: Charging Party 25(a) and (b), you said?

16 MS. WALKER: Yes, Your Honor.

17 JUDGE ROSAS: Are received in evidence.

18 **(Charging Party's Exhibits 25(a) and 25(b) received in**
19 **evidence.)**

20 MS. WALKER: If I could just have maybe 5 minutes, Your
21 Honor?

22 JUDGE ROSAS: Sure.

23 MS. WALKER: I think I'm done.

24 **JUDGE ROSAS: Off the record.**

25 **(Off the record from 10:41 a.m. to 10:47 a.m.)**

1 MS. WALKER: That's all I have, Your Honor.

2 Thank you, Mr. Bontempo.

3 JUDGE ROSAS: Okay.

4 THE WITNESS: You're welcome.

5 JUDGE ROSAS: That concludes cross-examination by the
6 Charging Party. Cross-examination by Respondent?

7 MR. HEARING: We'd ask for the Jencks production.

8 MS. LEONARD: Your Honor, there are two affidavits, one
9 of 11 pages that was provided to the Board during the
10 investigation, and another that was filed by the Union with
11 its objections that is eight pages.

12 JUDGE ROSAS: Oh. I generally give about a minute a
13 page, so see if you can do it in about 15, or if you need a
14 little more time, let me know. All right?

15 MR. HEARING: Thanks.

16 **JUDGE ROSAS: Off the record.**

17 **(Off the record from 10:47 a.m. to 11:07 a.m.)**

18 **JUDGE ROSAS: On the record.**

19 **CROSS-EXAMINATION**

20 Q. BY MR. HEARING: All right, so let's start with when you
21 started with AMS. Do you remember your testimony yesterday
22 about when you started at AMS?

23 A. Yes, I do.

24 Q. And what's your recollection as to when you started?

25 A. That was an employment period sometime, and I'm not

1 exactly sure, roughly around the year 2000.

2 Q. And how long did that last?

3 A. Maybe a couple of months.

4 Q. And how did that employment end?

5 A. I left to take employment at a jobsite that was closer
6 to my residence.

7 Q. So you left voluntarily?

8 A. Yes, I did.

9 Q. And you were a mason, correct?

10 A. That is correct.

11 Q. All right. Then you came back, you testified yesterday,
12 in 2011. And you were there from 2011 to 2013 as a foreman
13 or superintendent. That's what your testimony was yesterday,
14 correct?

15 A. Yes, it was, sir.

16 Q. All right. Do you remember making an employment
17 application with AMS when you came back the second time?

18 A. Yes, I do.

19 Q. All right. Would you be able to identify it if I placed
20 it in front of you?

21 A. Yes, sir. I would.

22 **(Respondent's Exhibit 40 marked for identification.)**

23 Q. BY MR. HEARING: All right. In that book in front of
24 you, if you turn to Exhibit Number 40. Would you turn to the
25 last page, sir? Is that your signature at the bottom?

1 A. Yes, it is.

2 Q. Next to what date?

3 A. 4/30/2012.

4 Q. So does this refresh your recollection that you actually
5 came back to AMS the second time as a foreman in April, late
6 April, early May of 2012?

7 A. That could be correct. Yes.

8 Q. Well, which is correct? What you said yesterday, that
9 it was 2011, or that you came, actually came back in late
10 April 2012?

11 A. It appears --

12 Q. Or --

13 A. It appears --

14 Q. Or May of 2012?

15 A. It appears to be 4/30/2012.

16 Q. All right. So you're a whole year off?

17 A. I could have been, yes.

18 Q. Well, you could have been, or were you?

19 A. It appears that I was.

20 Q. All right. And when you -- you filled out this
21 application; is that correct?

22 A. Yes, I did.

23 Q. The -- probably the only thing that's not your
24 handwriting is there on the first page, at the bottom. Is
25 that your handwriting?

1 A. No, sir, it is not.

2 MR. HEARING: All right. Move the introduction of
3 Respondent's 40.

4 MS. LEONARD: No objection from the General Counsel,
5 Your Honor.

6 MS. WALKER: No objection.

7 JUDGE ROSAS: Respondent 40 received.

8 **(Respondent's Exhibit 40 received in evidence.)**

9 Q. BY MR. HEARING: All right, now in this application,
10 sir, you understood it was important to be truthful and
11 accurate in what you put in here, correct?

12 I'm not asking you to review what you put in there. And
13 I'm going to get that, about whether it's truthful and
14 accurate. My question was, sir, is do you understand that
15 you would be truthful and accurate in the information that
16 you put in this application?

17 A. Yes, sir.

18 Q. And there's an applicant's statement above your
19 signature on the last page, isn't there, sir, where you
20 say -- where it says, "I certify that answers given here are
21 true and complete to the best of my knowledge," correct?

22 A. Yes.

23 MS. WALKER: Objection. It's -- the document speaks for
24 itself.

25 JUDGE ROSAS: I'll allow it. Overruled.

1 MR. HEARING: And --

2 JUDGE ROSAS: He said yes.

3 Q. BY MR. HEARING: You read that statement before you
4 signed it, correct?

5 A. Yes, sir.

6 Q. In fact, above your signature, it says, "I have read and
7 fully understand the above statements and conditions for
8 employment." You had actually done that by the time you
9 signed it, right?

10 A. Yes, sir.

11 Q. All right. So the question on page 2 of "Have you ever
12 been convicted of a felony," and you gave the answer no, that
13 was an incorrect statement, wasn't it, sir?

14 A. On page 2?

15 Q. Yes, sir. Top of page 2.

16 A. That's correct.

17 Q. You, in fact, had been convicted of a felony back in
18 1995 and did jail time, correct?

19 A. That is correct.

20 Q. And you failed to disclose that on this application and
21 otherwise to AMS, correct?

22 A. That is correct.

23 Q. So you have a history of lying to AMS, correct?

24 MS. WALKER: Object. It's harassing.

25 JUDGE ROSAS: I'll sustain that. You can pursue it.

1 Rephrase.

2 MR. HEARING: Sure.

3 Q. BY MR. HEARING: And can you -- do you acknowledge that
4 you've lied to AMS in the past?

5 A. It appears on this application, yes, sir.

6 Q. All right. Now, did you -- when you were hiring, by
7 your testimony, you were hiring masons, you said you could
8 hire them without checking with upper management, if I
9 understood your testimony correctly. Is that what your
10 testimony was today?

11 A. That is correct.

12 Q. Did you have them fill out an employment application?

13 A. Did I personally?

14 Q. Yes, sir.

15 A. No, sir.

16 Q. So, but they had to fill out employment applications,
17 right?

18 A. That is correct.

19 Q. And they had to be subject to, those applications had to
20 be subject to review by AMS, correct?

21 A. That's correct.

22 Q. And AMS management did that review, correct?

23 A. That's correct.

24 Q. Not you, right?

25 A. That's correct.

1 Q. So AMS management, after getting the application,
2 actually made the decision whether to hire that individual or
3 not, correct?

4 A. Not ultimately, no. That wouldn't be correct.

5 Q. Well --

6 A. Sometimes we were able to put the employees to work
7 while this review was going on, so --

8 Q. But you understood that AMS could say, based upon what
9 they got from an application, that they didn't want that
10 employee to work for AMS, correct?

11 A. Say that again, sir?

12 Q. You understood that once an employee filled out an
13 application and provided it to AMS, AMS management retained
14 the right to say, we don't want that employee, correct?

15 A. Yes, sir.

16 Q. All right. And so, if you -- if I understand you
17 correct, your testimony correctly, you were able to make a
18 field decision to hire someone, but that decision was subject
19 to ultimate review by AMS management, correct?

20 A. That's correct.

21 Q. All right. And ultimately, you received directions on
22 whether to hire more masons for a job or let masons go
23 because of the winding down of the work from AMS management,
24 correct?

25 A. That was based on a superintendent's decision on the

1 job.

2 Q. So let me see -- let's break that down, then. Had
3 you -- when you were the superintendent, had you been
4 instructed by AMS to hire more masons?

5 A. Yes.

6 Q. All right. Had you been instructed, when you were a
7 superintendent, by AMS management, to lay off masons because
8 of the winding down of work?

9 A. That was done at my discretion, but reviewed through
10 AMS.

11 Q. Sure, because AMS ultimately paid the employees,
12 correct?

13 A. That's correct.

14 Q. Not you, right?

15 A. That's correct.

16 Q. All right. So AMS ultimately had the authority to say
17 how many hours were going to be worked by masons on your jobs
18 that you were the superintendent, because they had to pay for
19 it, correct?

20 A. That is correct.

21 Q. All right. Now, with regard to your testimony that you
22 let employees go, that you had today, you made that assertion
23 here today, do you recall one employee that you terminated?

24 A. Not off the top of my head, I don't.

25 Q. Okay. You understand the purpose of the hearing here

1 today before His Honor, correct?

2 A. Yes, sir.

3 MS. WALKER: Object to relevance.

4 JUDGE ROSAS: He's going somewhere. Now let's see what
5 the next question is.

6 MR. HEARING: Sure.

7 Q. BY MR. HEARING: You had the opportunity to research
8 your own notes or records before you came here to testify
9 before the ALJ, correct?

10 A. Yes, I did.

11 Q. All right. And having done so, you did not come up with
12 one name of one employee that you claim now that you
13 terminated while you were a superintendent, correct?

14 A. That's correct.

15 Q. All right. And you had the opportunity to see which
16 employees that you hired, through any notes or written
17 recollections that you may have from the time that you were a
18 superintendent prior to this hearing today, correct?

19 MS. WALKER: Objection. It assumes facts not in
20 evidence.

21 JUDGE ROSAS: I'll allow it. You can answer if you
22 know.

23 THE WITNESS: I don't know.

24 Q. BY MR. HEARING: I'm sorry?

25 A. Could you repeat the question?

1 Q. Sure. You had the opportunity, before you came here to
2 testify today, to review any notes or records that you have,
3 from the time when you were a superintendent at AMS, to see
4 if you could identify particular employees that you hired,
5 correct?

6 A. I don't have any records from that time that I kept,
7 that I would be able to review during that period with AMS.

8 Q. Okay. Now, with regard to your testimony about keeping
9 an eye on safety, when you came on to AMS, in addition to
10 filling out the employment application, you were required to
11 review the employee handbook, correct?

12 A. That is correct.

13 Q. And you were required to acknowledge receipt and review
14 of it, correct?

15 A. To be honest with you, I don't recall that ever being
16 done, no.

17 Q. Okay. So you were required to do it, but you don't
18 remind -- you don't remember actually doing it?

19 A. I don't remember actually doing it. That's correct.

20 Q. All right. Now, do you recall that when you came on to
21 AMS in 2012, that you were required to go through some safety
22 training?

23 A. No, I do not.

24 Q. All right. Do you recall that the Company had a safety
25 policy in effect when you came on in 2012?

1 A. It was never brought to my attention that, when I
2 started work there, that there was a safety policy or
3 anything that was in question at that time.

4 Q. Well, then how were you supposed to keep an eye on
5 safety, sir, on the project?

6 A. I was hired as a bricklayer and given a trial period to
7 see if I had the superintendent qualifications. So I was put
8 on a job, and I went to work. So at that point, for lack of
9 better words, it was a trial time, and there was no
10 discussion about safety or my role further down the road as a
11 superintendent or safety at that time.

12 Q. At which time? The time of your hire or when you became
13 a superintendent?

14 A. At the time I was hired.

15 Q. All right. How about when you became a superintendent?
16 How did you come to understand that you were to keep an eye
17 on safety?

18 A. That was through conversations with Mr. Carney and
19 Mr. Feliz.

20 Q. All right. And the conversations that you had with
21 Mr. Carney and Mr. Feliz about that, tell us about those,
22 please.

23 A. You know, there wasn't a lot in regards to safety. I
24 think it was understood that I was a superintendent for many
25 years and understood the roles of being a superintendent. So

1 I'm not say -- I don't recall any specific, you know,
2 conversations of what my safety role was going to entail
3 there.

4 Q. Do you remember --

5 A. It was assumed that I knew.

6 Q. Do you remember being provided a copy of Respondent's
7 Exhibit 3 in evidence? You can turn to that in the book, if
8 you need to.

9 JUDGE ROSAS: When you refer to, is it Beliz, or are you
10 referring to Feliz?

11 THE WITNESS: Feliz.

12 MR. HEARING: Yeah, I'm sorry, Your Honor.

13 JUDGE ROSAS: Okay.

14 MR. HEARING: I'll make it correct --

15 JUDGE ROSAS: I just want to make sure the record is --

16 MR. HEARING: Yeah.

17 JUDGE ROSAS: -- is at least the way I'm hearing.

18 Q. BY MR. HEARING: The question was if you recall being
19 provided a copy of this policy statement and the Company's
20 table of contents regarding the safety requirements when you
21 were made the superintendent on a job.

22 A. Do I recall it?

23 Q. Yes, sir.

24 A. No, I don't.

25 Q. All right. But you don't dispute it, though, do you?

1 A. I don't recall receiving it.

2 Q. All right. Does that mean you dispute being covered --
3 what the Company's safety policies were before you were
4 installed as a superintendent?

5 A. Like I stated, I don't recall this.

6 Q. I understand. You've said that three times now. What
7 I'm asking now is that do you dispute that the safety
8 policies were covered with you before you were installed as a
9 superintendent?

10 A. Yes, I do.

11 MS. WALKER: Objection. It's --

12 JUDGE ROSAS: Sustained. Sustained, stricken.

13 MR. HEARING: All right, so --

14 JUDGE ROSAS: Rephrase.

15 MR. HEARING: Sure.

16 Q. BY MR. HEARING: You testified earlier that safety was
17 discussed with you by both Mr. Feliz and also Mr. Carney,
18 correct?

19 A. That is correct.

20 Q. And so is it your testimony, then, that this policy
21 itself, that's Respondent's Exhibit 3, was -- you don't
22 recall it being covered with you?

23 A. That's correct.

24 Q. All right. How about Exhibit Number 4, Respondent's 4
25 in evidence? Was the fall protection program covered with

1 you by Mr. Carney and/or Mr. Feliz prior to you being
2 installed as superintendent?

3 A. I don't recall this one either.

4 Q. All right. And so my same question with regard to that,
5 then, how were you keep an eye on safety on the job if this
6 hadn't been covered with you?

7 A. Again, I have a longtime employment of being a
8 superintendent for many years. It was understood that, in
9 fact, that I knew this, and in fact, that I did.

10 Q. Okay. So you understood, then, that employees working
11 above 6 feet in a condition where rails are not around them,
12 that they are to wear a harness that they tie off?

13 A. I think the OSHA rule is actually 10 feet.

14 Q. Right.

15 A. Some jobsites require a different --

16 Q. Some of the contractors require lower than 10 feet,
17 correct?

18 A. That is correct.

19 Q. And do you recall that when you were at AMS, working on
20 the jobs you worked on, that AMS required harnesses and
21 tie-offs at elevations of 6 feet for fall protection?

22 A. Quite frankly, the first job I ran for AMS, we did not
23 utilize fall protection at any time, at any level.

24 Q. Well, if you -- you understand that if you've got rails
25 around you, and you're working facing a wall within 14

1 inches, that the harness and the tie-off is not required,
2 even by OSHA, correct?

3 A. That's correct.

4 Q. All right. So do you recall, too, that -- and I know
5 you weren't employed then, but do you remember in 2009 that a
6 mason that was employed by AMS unfortunately fell?

7 MS. WALKER: Objection.

8 MS. LEONARD: Objection, Your Honor.

9 MS. WALKER: Assumes facts not in evidence, and that was
10 not his testimony.

11 MR. HEARING: I didn't even get the question out.

12 JUDGE ROSAS: Hold on. The question was whether he
13 recalled that an employee fell. Were you employed by AMS at
14 the time?

15 THE WITNESS: No, I was not, Your Honor.

16 JUDGE ROSAS: Did you have any connection with AMS at
17 the time, in a labor capacity or otherwise?

18 THE WITNESS: No, I did not.

19 JUDGE ROSAS: Okay. So the question is whether he heard
20 about it?

21 MR. HEARING: I can ask. You've just asked the
22 questions I needed to ask, so I'll --

23 JUDGE ROSAS: Okay.

24 MR. HEARING: -- ask another witness, so --

25 JUDGE ROSAS: Okay.

1 Q. BY MR. HEARING: So, but you understand the importance
2 of the fall protection provisions that AMS and other
3 contractors have for masons that work at elevations, correct?

4 A. Yes, sir. I do.

5 Q. You understand that it's to prevent death or serious
6 injury, correct?

7 A. That's correct.

8 Q. Okay. Now, turn to Exhibit Number -- Respondent's 7,
9 please.

10 A. Yes, sir.

11 Q. All right. And you weren't present for this new
12 employee orientation, were you?

13 A. No, sir. I don't believe so.

14 Q. You testified that you had access to Westshore Yacht
15 Club prior to the petition for election being filed, and I
16 just want to be clear that on or about February 9th, 2016 --
17 do you have any recollection of being at the Westshore Yacht
18 Club that day?

19 A. I can't recall that day, in general.

20 Q. Would you have kept a note of it, in the notes that --
21 in your weekly reports that you submitted to your boss?

22 A. Yes, sir.

23 Q. All right. And do you recall reviewing those notes
24 recently pursuant to a subpoena request from the Company?

25 A. It was just, in fact, last night, so going through the

1 actual dates of placing that? No. I -- you know --

2 Q. There was no reference in there to you being at
3 Westshore Yacht Club on February 9th, 2016, correct?

4 A. I can't state that --

5 MS. WALKER: Objection. If he has a document he'd like
6 to show the witness --

7 MR. HEARING: I'm asking for his --

8 JUDGE ROSAS: Overruled.

9 MR. HEARING: -- recollection.

10 JUDGE ROSAS: February 9th, any recollection?

11 THE WITNESS: Not that I recall. It would be hard to
12 pinpoint that date accurately.

13 Q. BY MR. HEARING: But if you had been there that day, you
14 would have noted it in your weekly report, correct?

15 A. I would think so. Yes, sir.

16 Q. All right. And those weekly reports, minus redactions,
17 you understand, have been produced to the Company as of this
18 morning, right?

19 A. Yes, sir. I do.

20 Q. Okay. All right, now, you were actually referred to AMS
21 by the Union, correct? When you came in 2012.

22 A. No, sir. That is not correct.

23 **(Respondent's Exhibit 39 marked for identification.)**

24 Q. BY MR. HEARING: All right. Well, turn to Exhibit
25 Number 39, Respondent's Exhibit 39, in that book in front of

1 you. Does this document bear your signature?

2 A. Yes, it does.

3 Q. Next to what date?

4 A. 5/29/12.

5 Q. All right. And does this refresh your recollection that
6 a work referral for you was sent by Mark Peterson to AMS?

7 A. Yes, it does.

8 MR. HEARING: All right. Move the introduction of
9 Respondent's 39.

10 MS. WALKER: May I have some voir dire on this, Your
11 Honor?

12 **VOIR DIRE EXAMINATION**

13 Q. BY MS. WALKER: Mr. Bontempo, do you know when this
14 document was signed?

15 A. I don't, but I could tell you how it, the time frame
16 went down.

17 Q. Well, let me ask you this.

18 All right. In looking at Respondent's Exhibit 40 that's
19 already been admitted into evidence, what is the date of that
20 application?

21 A. 5/29/12.

22 Q. Okay. And did you complete any part of Respondent's
23 Exhibit 39?

24 A. This is 39, that we're looking at?

25 Q. Yes.